Board of County Commissioners
Office of Utility Regulation

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Florida Public Service Commission
Division of Commission Clerk and Administrative Services
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Subject: FPSC Docket 021066-WS re. Investigation into Proposed Sale of Florida Water Services; Request for Comments

February 12, 2003

Commission Clerk:

My office has been requested to forward the enclosed documents for inclusion in your records for the ongoing investigation into the proposed sale of Florida Water Services. These are the documents received by my office from Mr. Derek Phillips, Assistant County Attorney for Osceola County. These documents concern that county's filings contesting the pending sale. For the record, these include:

1. Cover letter of 21 January 2003 from Derek Phillips to Bob Knight.
2. Petition for Writ of Quo Warranto of Osceola County versus named individuals of Gulf Breeze, Milton and Florida Water Services in Case No. C103-OC-0107 in the Circuit Court of the Ninth Judicial Circuit; including exhibits attached thereto as follows:
3. Exhibit "A," letter of December 17, 2002 from Richard Doran of the Office of Attorney General for Florida to Ms. Jo O. Thacker denying a request to take quo warranto action.
4. Exhibit "B," the interlocal agreement between Gulf Breeze and Milton apparently last revised on 9/16/02.
5. Exhibit "C," the Asset Purchase Agreement between Florida Water Services Corporation and Florida Water Services Authority dated September 19, 2002.
6. Exhibit "D," an email from Richard Lott to Ed Gray, III sent Monday, September 16, 2002 concerning points on Exhibits B and C.
7. Plaintiff's (Osceola County's) Reply to Defendants' Motion to Dismiss Amended Complaint versus Gulf Breeze, Milton and Florida Water Services in Case No. C102-OC-2810 in the Circuit Court of the Ninth Judicial Circuit; including exhibits attached thereto as follows:
8. Exhibit "A," Asset Purchase Agreement between Florida Water Services Corporation and Florida Water Services Authority dated September 19, 2002.

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9. Exhibit "B," Amendment and Restatement of Asset Purchase Agreement between Florida Water Services Corporation and Florida Water Services Authority dated December 20, 2002.
10. Exhibit "C," an email from Richard Lott to Ed Gray, III sent Thursday, September 5, 2002 concerning the initial Florida Water Services Authority public notices and in particular stating that **"I hope we do not have to mention specifically that we are acquiring the "Florida Water Services Company" assets in the ad."**
11. Plaintiff's (Osceola County's) Reply to Defendants' Alternative Motion to Dismiss or Transfer Due to Improper Venue versus Gulf Breeze, Milton and Florida Water Services in Case No. C102-OC-2810 in the Circuit Court of the Ninth Judicial Circuit.

Please enter these documents into your records for this docket and date stamp the duplicate copy of this cover letter and mail it in the enclosed stamped, self-addressed envelop.

Sincerely,

Robert Knight
Utilities Regulatory Director

CC: Robert B. Battista, Citrus County Attorney

OSCEOLA COUNTY ATTORNEY'S OFFICE

County Attorney
Jo O. Thacker

Deputy County Attorney
Kathlein K. Payne

Assistant County Attorney
Sherry G. Hopkins

Assistant County Attorney
Scott D. Polodna

Assistant County Attorney
Olga Sanchez de Fuentes

Assistant County Attorney
Derek Phillips

21 January 2003

Mr. Bob Knight, Esq.
Utilities Regulatory Director
Office of Utilities Regulation
3600 West Sovereign Path, Suite 269
Lecanto, FL 34461

Re: Florida Water

Dear Mr. Knight:

I've been asked to send you hard copies of the documents that we've filed in Osceola County to contest the pending sale of the utility systems.

Enclosed, please find copies of our docketed petition in quo warranto and reply to defendants' motion to dismiss.

I hope you find these filings useful. If you have any questions, please call me at (407) 343-2334.

Sincerely,

Derek Phillips
Assistant County Attorney

/Enclosures

Osceola County

1 Courthouse Square, Suite 4200
Kissimmee, Fl 34741-5488
Phone (407) 343-2330
Fax (407) 343-2353

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IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT
IN AND FOR OSCEOLA COUNTY, FLORIDA

OSCEOLA COUNTY, a political subdivision of the State of Florida,

Petitioner,

Case No. CI03-OC- 1167

v.

CARL HOFFMAN, RICHARD OUTZEN JR., and CLAY FORD, in their capacities as Councilmen for the City of Gulf Breeze, a Florida Municipal Corporation; MARILYN JONES, BETTY WILLEY, BUDDY JORDAN, R.L. LEWIS, CLAYTON WHITE, and LLOYD HINOTE, in their capacities as Council Members for the City of Milton, a Florida Municipal Corporation; J. LANCE REESE, BRENDA POLLACK, and ROBERT SMITH, in their capacities as Public Officials for Florida Water Services Authority,

Respondents.

_____/

PETITION FOR WRIT OF QUO WARRANTO

Pursuant to Fla. Const. art. V, § 5(b) and Fla. R. Civ. P. 1.630, Osceola County respectfully petitions this Court for the issuance of writs in quo warranto directed to Respondents in their capacities as Council Members for the City of Gulf Breeze, Council Members for the City of Milton, and putative public officials for the Florida

Water Services Authority (FWSA). Issuance of these writs is appropriate because a preliminary basis for relief exists in that Respondents are attempting to exercise rights or privileges ostensibly derived from their official governmental capacities which depart from the essential requirements of the law in such a manner that Petitioner's constitutional and statutory rights have been violated and Petitioner has suffered material injury for which there is no adequate remedy by appeal. Petitioner shows the Court in support hereof as follows:

I. JURISDICTIONAL BASIS

1. Fla. Const. art. V, § 5(b) and Fla. R. Civ. P. 1.630 confer on this Court jurisdiction to issue writs in quo warranto. The writ has traditionally been used to test the right of persons or entities to exercise some right or privilege which derives from the state or to challenge actions that are beyond the authority granted to a public official. *Merrill v. Gerow*, 79 Fla. 804, 85 So. 144 (1920); *Martinez v. Martinez,* 545 So.2d 1338 (Fla. 1989); *Belle Island Inv. Co., Ltd. v. Feingold*, 453 So.2d 1143 (Fla. 3rd DCA 1984); *Snead v. State*, 415 So. 2d 887 (Fla. 5th DCA 1982). Quo warranto is a remedial writ, and it may be extended to new situations on a proper showing. *State ex. rel. Pooser v. Wester*, 126 Fla. 49, 170 So. 736 (Fla. 1936). Although the Attorney General has been notified of these proceedings, he has demurred to file suit against Respondents. (Exhibit A).

2. Petitioner has standing to pursue the writ in this venue. In quo warranto proceedings seeking the enforcement of a public right[1], the people are the real party to the action; the person bringing suit need not show that he has any real or personal interest in it. *Pooser, supra,* 126 Fla. at 52-53, 170 So. at 739. Due to the actions complained of herein and the direct, imminent threat they pose to the constitutional rights of Osceola County and its more than 172,000 citizens, venue for this action is proper in the Ninth Circuit Court in and for Osceola County. *Star Employment Service, Inc., v. Florida Industrial Commission*, 122 So.2d 174 (Fla. 1960)(suit alleging invasion of constitutional rights by governmental agency properly brought in county where invasion is threatened).

3. The Local Government Comprehensive Planning and Land Development Regulatory Act, Part II, Fla. Stat. ch. 163, requires each county and municipality to adopt a financially feasible local government comprehensive plan and implement land development regulations. Fla. Stat. ch. 163.3177(3) requires each comprehensive plan to contain a mandatory capital improvement element for all public facilities including sanitary sewer and potable water facilities. *See* Fla. Stat. ch. 163.3164(24) (definition of "public facilities"). Fla. Stat. ch. 163.3180 establishes

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[1] The constitutional rights violated here are those secured to Petitioner and its citizens guaranteeing them due process and home rule authority as set forth herein.

the concurrency mandate for the availability of public facilities as a key enforcement and monitoring mechanism within the local comprehensive planning process. Specifically, Fla. Stat. ch. 163.3180(2)(a) provides as follows:

> Consistent with public health and safety, sanitary sewer, solid waste, drainage, and potable water facilities shall be in place and available to serve new development no later than the issuance by the local government of a certificate of occupancy or its functional equivalent.

Id.

4. Fla. Stat. ch. 367 provides the statutory authority for the regulation of privately-owned water and wastewater systems as to both service and rates and grants the Florida Public Service Commission (FPSC) the exclusive jurisdiction for such regulatory functions. Additionally, under such regulatory scheme, Fla. Stat. ch. 367.171 grants to each county the option to exclude itself from regulation by the FPSC and regulate the rates and services of a privately-owned utility by the adoption of a resolution by the board of county commissioners. Fla. Stat. ch. 367.022 exempts from such regulatory scheme systems owned, operated, and managed by governmental authorities.

5. Acquisition of the Florida Water utility assets by the FWSA places exclusive jurisdiction over the rates and service of the existing Florida Water utility assets in the FWSA governing board. The power of Osceola County to provide and

plan for the availability of essential water and wastewater public facilities concurrent with the demand for such facilities within the County is placed within the sole discretion of the Gulf Breeze City Council in violation of the power of local self-government constitutionally granted to Osceola County as a charter county. Such abrogation of the power of local self-government provided in the Osceola County charter jeopardizes the County's ability to comply with the statutorily-mandated local comprehensive planning requirements, and it places all growth management initiatives relating to water and wastewater public facilities within the untrammelled whim and discretion of the FWSA governing board.

6. Respondents Reese, Pollack, and Smith were purportedly appointed to serve on a putative Board of Directors for the FWSA - an alleged body corporate and politic of the State of Florida - pursuant to an interlocal agreement that the Cities of Gulf Breeze (population 5665) and Milton (population 7045), both municipal corporations of the State of Florida, executed on 17 September 2002. (Exhibit B hereof). Respondent Council Members of the Gulf Breeze and Milton City Councils struck their deal under Fla. Stat. ch. 163.01 for the ostensible purpose of, among other things, purchasing, operating, managing, and administering "public utilities" as defined in Fla. Stat. ch. 163.

7. Under the interlocal agreement, Respondents Reese, Pollack, and Smith

are deemed to be acting in their official capacities when conducting the FWSA's business. The agreement charges Respondents with the responsibility to conduct that business in accordance with the requirements of the Florida Government in the Sunshine Law.

8. Petitioner contends that Respondents Reese, Pollack, and Smith hold no title as public officials of FWSA - an entity illegally formed under Florida constitutional and statutory law. Even if these Respondents did hold legal title, they illegally exercised their authority by: authorizing an acquisition agreement with a private corporate entity called Florida Water Services Corporation (Florida Water); and illegally asserting authority over public services within the jurisdictional limits of Osceola County.

9. Petitioner further asserts that Respondents violated Florida constitutional and statutory law by: (1) their conduct in the negotiations with Florida Water that led to the purported creation of the FWSA and the ensuing acquisition agreement between those parties; and (2) the irremediably defective manner in which these Respondents discharged their legal duties in derogation of the due process rights that Osceola County and its citizens enjoyed relative to those proceedings.

II. STATEMENT OF THE FACTS

10. Florida Water owns and operates 105 water systems and 47 wastewater utility systems in 26 Florida counties and municipalities. Eight of these systems are located in Osceola County. Osceola County is a Florida Water customer, having paid it connection fees and received in exchange water and wastewater treatment services.

11. Discussions with Florida Water revealed a desire on its part to sell its water and wastewater system holdings in this state.

12. Many counties and cities across the State of Florida, each of which contained assets owned by, and customers served by, Florida Water within their respective jurisdictions, participated with the Florida Governmental Utility Authority (FGUA) in negotiations for the acquisition of Florida Water's assets.

13. By Resolution 01/02-172, Osceola County determined that the County's acquisition of the Florida Water assets by the County, operating through the FGUA, was in the public interest. The County found that it had a paramount public purpose in acquiring the water and wastewater systems to meet the statutory mandates of comprehensive planning and growth management responsibilities and to provide essential public services to the County and its citizens.[2]

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[2] By resolution duly adopted on 23 December 2002, Osceola County formally joined the FGUA.

14. FGUA bargaining on the terms, conditions, and purchase price to be paid to Florida Water continued into September 2002.

15. In September 2002, it was revealed that Florida Water and its representatives had been lobbying Gulf Breeze and Milton governmental officials since early August 2002 to convince them that it was in their best interests to form a rival interlocal authority to make a competing bid on the Florida Water assets.

16. Florida Water owns no assets in Gulf Breeze or Milton. Moreover, Florida Water serves no citizens of Gulf Breeze or Milton.

17. The lobbying efforts prosecuted on Florida Water's behalf included Gulf Breeze's City Manager and the Executive Director of Gulf Breeze Financial Services, Inc., a corporate entity whose board of directors consists of members of the Gulf Breeze City Council, having individual discussions with Gulf Breeze City Council members on this subject, a matter which would foreseeably, and did, come before the Gulf Breeze City Council.

18. Moreover, in mid-August, 2002, a future FWSA Board member and a Gulf Breeze City Council member met with Florida Water executives to negotiate the terms of both the interlocal agreement, and the consequent Florida Water acquisition agreement, that so soon followed.

19. On 21 August 2002, Florida Water officials and the Gulf Breeze City

Council held a workshop. The agenda posted for the event did not disclose its topic. Upon the workshop's conclusion, however, a raft of e-mails and proposals pertaining to the transactions disputed in this Petition issued to a committee of negotiators and advisors designated by and acting on behalf of the Gulf Breeze City Council.

20. None of the meetings or discussions of the designated committee of negotiators and advisors were noticed or open to the public.

21. The deliberative processes related to the formation of the FWSA and the negotiation of the acquisition agreement were conducted in secret meetings.

22. Respondents' committee of advisors affirmatively took steps to prevent public notification of, and minimize public interest in, the formation of the FWSA and its later consideration of the acquisition of Florida Water's assets.

23. On 17 September 2002, Gulf Breeze and Milton executed the subject interlocal agreement and thereby created the FWSA.

24. Respondents formed the FWSA and approved the acquisition agreement by ceremonially adopting the work product and ratifying the secret actions of their committee of negotiators and advisors, all of which work product and actions were produced or engaged in at secret meetings.

25. Section 7(B) of the agreement obligates the FWSA to make annual

payments to Gulf Breeze amounting to no less than 2% of the annual gross revenues of such utilities, but in no event less than $1,500,000. That sum represents more than 10% of the City of Gulf Breeze's annual budget.

26. Section 7(C) of the agreement binds the FWSA to transfer to Gulf Breeze such amounts as might be required to be transferred from time to time, as specified solely by resolution of Gulf Breeze,

> to provide funds for the payment to public agencies having jurisdiction over portions of the service areas of any project, of regulatory fees, reimbursements, or taxes, (including contributions or payments in lieu of such amounts) in connection with the facilities and operations of the [FWSA] in such jurisdictions.

27. Section 7(D) of the agreement commits Gulf Breeze to remit to Milton 20% of all amounts that Gulf Breeze receives from the FWSA under § 7(B).

28. Section 4(O) provides Gulf Breeze with the power to remove any FWSA director with or without cause at any time.

29. Section 6 of the agreement purports to confer on the FWSA the authority to issue bonds to finance the acquisition of any utility system.

30. The intended and practical effect of these provisions was to create a conduit, appearing to have the imprimatur of legislative legitimacy, that could be used to channel funds into the coffers of Gulf Breeze and Milton.

31. On 19 September 2002, representatives of local governments whose constituents comprised approximately 80% of Florida Water's customer base informed the FGUA Board of Directors that the representatives supported FGUA's acquisition of Florida Water's assets for approximately $450 million.

32. Pursuant to a public notification process admittedly designed to avoid notification of the affected public of the intent of FWSA to enter into an agreement to acquire Florida Water (the Acquisition Agreement) (Exhibit C)[3], the FWSA board convened on 19 September 2002 for the first time since its creation and found that the proposed acquisition was in the public interest.

33. Section 1.1 of the Acquisition Agreement provides that Florida Water shall reimburse the FWSA for its due diligence costs. Section 13.16 of the Acquisition Agreement provides that Florida Water shall indemnify and hold the FWSA, Gulf Breeze, Milton, as well as the respective city mayors, council members, employees, officers and agents, harmless for any costs, claims, liabilities or damages resulting either from challenges to the Acquisition Agreement or objections to completion of the proposed acquisition by the FWSA.

34. Also on 19 September 2002, Florida Water issued a press release

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[3] The parties executed an amended Acquisition Agreement on 20 December 2002. The pertinent operative clauses in the two contracts are substantively identical.

announcing that it had contracted to sell the subject water and wastewater utility systems to the FWSA for $507 million - $471 million in cash payable in two installments, plus $36 million in capital charges to be retained by Florida Water over a three-year period.[4]

35. The amended acquisition agreement declares the contracting parties' intent to close their pending sale no later than 14 February 2003. Thus, the infringement of Osceola County's constitutional rights complained of herein is imminent.

36. By this Acquisition Agreement, the FWSA seeks to become the putative owner of water and wastewater utility systems in Osceola County - a political subdivision of the State of Florida located over 500 miles away from the Cities of Gulf Breeze and Milton. These utility systems serve over 19,000 thousand customers located in Osceola County, including Osceola County itself. The utility facilities owned and operated by Florida Water draw their water supplies from sources within Osceola County. Florida Water's utility systems treat wastewater generated from within Osceola County and dispose of the treated effluent in areas located within Osceola County.

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[4] The amended Acquisition Agreement reduces the purchase price to approximately $456,500,000.

37. The FWSA claims that it is not subject to regulation by any state or county regulatory body in the manner to which Florida Water is regulated by the FPSC and various county regulatory authorities. Therefore, FWSA would be free to extend the water and wastewater service areas served by the utility systems in Osceola County or refuse to extend service in areas currently included in such authorized service areas without consideration of Osceola County's comprehensive plan and other growth related policies and procedures as may apply to such utility service.

38. This result is both anomalous and illegal. No Florida Water customers reside in either Gulf Breeze or Milton. No Florida Water assets are located in either city. Osceola County's water utility assets have no logical, logistical, or physical connection with the Cities of Gulf Breeze or Milton. No local government/home rule governmental nexus exists between the actions of Gulf Breeze and Milton and the utility systems servicing Osceola County's citizens.

III. NATURE OF THE RELIEF SOUGHT

39. Petitioner seeks writs in quo warranto directing Respondents Reese, Pollack, and Smith to demonstrate that they legally acquired lawful title as FWSA officials, and that they acted lawfully in exercising their authority within Osceola County's jurisdictional limits by entering an agreement to purchase Florida Water's

assets located within Osceola County. Ultimately, as to these Respondents, Petitioner seeks a determination by this Court that they have no authority to hold title to and act as purported public officials of a special-purpose entity, the purpose of which - acquiring and profiting by utility systems located within and serving Osceola County - serves no valid municipal purpose on behalf of the residents of Milton or Gulf Breeze and is therefore invalid.

40. As to Respondent Council Members, Petitioner seeks determinations by this Court that: (1) they had no authority to execute the interlocal agreement that has given rise to these proceedings due to failings under the Government in the Sunshine Law; and (2) they do not possess the power to assert extraterritorial jurisdiction over assets and customers of Florida Water when no Florida Water assets and no Florida Water customers are located within the boundaries of the cities that the Council Members represent.

IV. ARGUMENT

A. No valid municipal purpose is served by Respondents acting in an official capacity on a specific-purpose governmental board which has, as its primary purpose, the creation of an investment and revenue source for Gulf Breeze and Milton through the provision of water and wastewater services to Osceola County - a political subdivision located over 500 miles away.

41. Under the Municipal Home Rule Powers Act, Fla. Stat. ch. 166.01, cities

have broad home rule powers within their jurisdictional limits, subject only to the caveat that the city's powers must be exercised for "valid municipal purposes." *City of Ocala v. Nye*, 608 So.2d 15 (Fla. 1992). If a municipal action has no relation to the morals, health, welfare, protection, and safety of the municipality's citizens, then that action has no valid municipal purpose. *City of Ormond Beach v. County of Volusia*, 535 So.2d 302 (Fla. 5th DCA 1988).

42. Here, Gulf Breeze and Milton have attempted to create in the FWSA an investment/entrepreneurial entity by which the cities can enjoy all the consequent monetary and legal benefits while avoiding the usual legal obligations therefor. As the FWSA's attorney explained to Gulf Breeze's City Attorney in correspondence dated 16 September 2002, "As you know, the objective we are pursuing is to implement a plan to expand the revenue sources of the City without creating any liability." (Exhibit D). Indeed, FWSA has been unapologetic in stating that the proposed acquisition is strictly a business proposition for the revenues that Florida Water will generate.

43. To this end, recall that the FWSA allegedly is authorized to issue bonds to fund its acquisition of Florida Water's assets. Where it is obvious that the primary purpose of a bond issue is to obtain proceeds to be used in an investment for profit,

no valid public purpose exists. *State v. City of Orlando*, 576 So.2d 1315 (Fla. 1991). The declaration that the court made there is equally apposite here:

> A municipality exists . . . to provide services to its inhabitants. . . . We see no valid public purpose in investing for investing's sake. Making a profit is an aspect of commerce more properly left to commercial banking and business entities.

576 So.2d at 1317.

44. While the FWSA is nominally a "public instrumentality" under the interlocal agreement, the flow of revenues from FWSA to which Gulf Breeze and Milton are contractually guaranteed and additional revenue which Gulf Breeze may receive simply by the Gulf Breeze City Council passing an ordinance requiring additional payments from the FWSA, as well as the way that the cities insulated themselves from liability for the FWSA's debts, conclusively proves that the FWSA is actually a profit engine cleverly disguised as a "public instrumentality." The cities cannot lawfully form an authority and issue bonds for the sole purpose of operating a business for profit, especially when doing so redounds to the material detriment of Osceola County by abrogating both the County's home rule powers and its statutory comprehensive planning and growth management responsibilities for its citizens.

B. Respondents have no authority to take any official action that operates in derogation of Petitioner's constitutional rights to home rule power and adversely affects Petitioner's citizens.

45. The fundamental statutory and constitutional predicate for the exercise of joint powers by local government pursuant to an interlocal agreement under the authority of Part II, Fla. Stat. ch. 163, is declared in Fla. Stat. ch. 163.01(4) as follows:

> A local agency of this state may exercise jointly with any other public agency of the state, of any other state, or of the United States Government any power, privilege, or authority which such agencies share in common and which each might exercise separately.

Neither Gulf Breeze nor Milton shares in common the power to acquire water and wastewater utility systems outside their boundaries absent the consent or acquiescence of the local governments within whose jurisdiction such utility systems are located. Any joint power exercised through the creation of a separate legal entity pursuant to Fla. Stat. ch. 163.01(7)(g)1 cannot be a power that neither Milton nor Gulf Breeze share in common.

46. Fla. Stat. ch. 163.01(7)(g) mandates that:

> **[A]ny separate legal entity created under this section, the membership of which is limited to municipalities and counties of the State, may acquire, own, construct, improve, operate, and manage public facilities relating to a governmental function or purpose, including, but not limited to . . . water or alternative water supply facilities . . . which may serve populations within or outside of the members of the entity.**

47. Both the legislative history of this section, and precedent evaluating municipal acquisition of water systems, show that Fla. Stat. ch. 163.01(7)(g) did not authorize the scheme that the FWSA is attempting here. The Legislative Staff Report for this section (then known as House Bill 1323; ch. 97-236, *Laws of Florida*) confirms that the Legislature never intended the extension of municipal powers to authorize entry into interlocal agreements for the acquisition and maintenance of water supply assets by local governments which did not have within their political bounds the assets or customers of the utility to be acquired. The Staff Report explained that ". . . ch. 163, F.S., regulates interlocal agreements, whereby cities or counties enter into agreements to provide services, or share expenses for services *which their residents need.*" [Emphasis added.]

48. Absent specific legislative authorization, the acquisition of a water and wastewater utility system by Milton and Gulf Breeze outside their jurisdictional boundaries absent the consent or acquiescence of the local governments within whose jurisdiction such utility systems are located cannot constitute a joint power which each share in common since neither Milton nor Gulf Breeze hosts any utility systems that are the subject the acquisition agreement contested here. The provision of Fla. Stat. ch. 163.01(7)(g)(1), providing that a separate legal entity can acquire systems that serve populations outside of the members of the entity, does not extend the

common power of either Milton or Gulf Breeze since no Florida Water utility assets are within the boundaries of either government.

49. Similarly, where the judiciary has upheld municipalities' extraterritorial exertion of their corporate powers regarding proprietary projects such as the one at issue here, the areas in which those powers were applied was limited to locales adjacent to and contiguous with the cities' boundaries. Moreover, the extraterritorial application of municipal power was approved because: it was necessary or imperative for the protection of the public health of the city (*State v. City of Pensacola*, 197 So. 520 (Fla. 1940)); existing private facilities were inadequate for present needs and those of contiguous entities were inadequate (*State v. City of Melbourne*, 93 So.2d 371 (Fla. 1957)); or there was an urgent need for water and alternative sources were inadequate (*State v. City of Cocoa*, 92 So.2d 537 (Fla. 1957), *Town of Riviera Beach v. State*, 53 So.2d 828 (Fla. 1951)).

50. The foregoing equitable and legal considerations prove that **Respondents exceeded their authority when they unilaterally asserted extraterritorial jurisdiction over the assets involved here.**

C. **The alleged interlocal agreement on which the FWSA is predicated, and the ensuing acquisition agreement that FWSA purported to strike with Florida Water, are both void *ab initio* because the FWSA's creation was unconstitutional and otherwise illegal.**

51. Fla. Const. art. I, § 24(b) mandates that:

> All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the legislature shall be open and noticed as provided in Fla. Const. art. III, § 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.

Fla. Const. art. I, § 24(c) decrees that this section is self-executing. The implementing legislation for these provisions is codified at Fla. Stat. ch. 286.

52. Fla. Stat. ch. 286.011 directs that:

> All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

53. **The Sunshine Law was enacted to protect the public from "closed door"**

politics and, as such, the law must be broadly construed to effect its remedial and protective purpose. *Evergreen the Tree Treasurers of Charlotte County, Inc. v. Charlotte County Bd. Of Com'rs*, 810 So.2d 526 (Fla. 2d DCA 2002). The statute should be construed so as to frustrate all evasive devices. This could be accomplished only by embracing the collective inquiry and discussion stages within the terms of the statute, as long as such inquiry and discussion was conducted by any committee or other authority appointed and established by a governmental agency, and related to any matter on which foreseeable action would be taken. *Town of Palm Beach v. Gradison*, 296 So.2d 473, 478 (Fla. 1974). Governmental action taken in violation of the Government in the Sunshine Law makes that action void *ab initio*. *Silver Express Co. v. Bd. of Trustees of Miami-Dade Community College et al.*, 691 So.2d 1099 (Fla. 3rd DCA 1997). This is true without regard to considerations of intent or prejudice; indeed, once a violation of the Sunshine Law is demonstrated, prejudice is presumed. *Port Everglades Auth. v. Int'l Longshoremen's Ass'n Local 1922-1*, 652 So.2d 1169 (Fla 4th DCA 1995).

54. The parade of correspondence, informal meetings, and piecemeal negotiations in which the Respondents and/or their committee of representatives and advisors participated both with Florida Water and among themselves constituted violations of the Sunshine Law. *Op. Atty. Gen. 90-17* (1990)(where a council

member was authorized, formally or informally, to meet with a private corporation and could exercise decisional authority on behalf of the Council, the meeting had to be open to the public); *Op. Atty. Gen. 94-21* (1994)(Council-authorized negotiating team whose efforts culminated in a finalized and approved agreement had to conduct all meetings in the Sunshine); *Inf. Op. to Evans*, (7 June 1989)(Council should postpone taking action on items controversial or of critical public concern until they have been properly noticed).

55. The formation of the FWSA and the approval and purported execution of the acquisition agreement took place within a one-week period, and Osceola County was not notified of any of the public proceedings relating thereto.

56. Sometime prior to September 16, 2002, the City Manager for Gulf Breeze and Executive Director for Gulf Breeze Financial Services, Inc., a corporation later named in the interlocal agreement as the administrator for the FWSA, spoke individually about creating an authority for the purpose of purchasing Florida Water's assets throughout Florida with individual Council Members of Gulf Breeze, matters which would foreseeably come before the Gulf Breeze City Council. In mid-August, a future board member of the FWSA and a Council member for Gulf Breeze met with executives of Florida Water Services Corporation for the purpose of negotiating the terms of the interlocal agreement and acquisition agreement.

57. On or about August 21, 2002, a workshop was held among the Gulf Breeze City Council and Florida Water; the agenda for said workshop made no mention of the subject matter of the workshop.

58. Subsequent to the workshop of August 21, 2002, a series of emails and proposals were exchanged with a team of negotiators and advisors designated by and acting on behalf of the Gulf Breeze City Council.

59. None of the meetings or discussions of the designated committee of negotiators and advisors were noticed or open to the public.

60. The deliberative processes related to the formation of the FWSA and the negotiation of the acquisition agreement were conducted in secret meetings.

61. The Defendants' committee of advisors affirmatively took steps to prevent public notification of the formation of the FWSA and subsequent consideration by the FWSA of the acquisition of Florida Water's assets.

62. In September, legal advertisements regarding the formation of the FWSA appeared in newspapers which had no circulation in Osceola County. Osceola County was never notified of any public meetings regarding the interlocal agreement and acquisition agreement prior to such time.

63. Defendants formed the FWSA and approved the acquisition agreement

by ceremonially adopting the work product and ratifying the secret actions of their committee of negotiators and advisors, all of which work product and actions were produced or engaged in at secret meetings.

64. Under Fla. Stat. ch. 286.011, Osceola County and its residents were entitled to reasonable notice of the meetings conducted by Gulf Breeze, Milton, and the FWSA. What constitutes reasonable notice is a case- and fact-specific determination, but it must suffice to apprize the public of the pendency of matters that might affect their rights, afford them the opportunity to appear and present their views, and afford them a reasonable time to make an appearance if they wished. *Lyon v. Lake County*, 765 So.2d 785 (Fla. 5th DCA 2000).

65. Respondents' conduct did not come close to satisfying the reasonable notice obligations that the law imposed upon them. Despite Respondents' knowledge that their proposed actions carried consequences both innumerable and portentous for 500-mile distant Osceola County and its more than 172,000 residents, Respondents and their representatives affirmatively decided not to publicize notices of their hearings outside of Santa Rosa County. Indeed, the extent of Respondents' *de minimis* efforts was to publish in the 16 September 2002 edition of the *Pensacola News Journal* notices of the several hearings contested herein. Respondents used no

broadcast media in any jurisdiction to publicize the meetings where this half-a-billion dollar deal would be discussed.

66. Inexplicably, the FWSA's first public meeting, conducted on 19 September 2002, was held in Escambia County at Pensacola Junior College. The only attendees at that meeting were the financiers, lawyers, city officials, and FWSA officers who were responsible for and would profit from approval of the deal.

67. Before Respondents took the illegal actions complained of herein, Osceola County, a constitutional Charter County since 1992, had cooperated with the FGUA acquisition efforts to assert the County's constitutional home rule power and statutory authority so as to ultimately acquire its several water and wastewater systems from Florida Water.

68. Concurrently, Respondent Council Members created the FWSA and, within one week, destroyed Osceola County's acquisition plan that had been over a year in the making. Respondents effected this destruction in contravention of the comity that usually obtains between governmental agencies and the requirements of the Florida Government in the Sunshine Law, in that Respondents through their designated committee intentionally prosecuted their campaign without notice to the County or its residents.

69. Respondent Council Members acted without jurisdiction in their attempt

to commit their respective cities to FWSA membership, and that effort was void *ab initio*. Concomitantly, Respondent FWSA members' conduct of the FWSA's business in violation of the Sunshine Law was equally effective in vitiating the FWSA's purported approval of the acquisition agreement with Florida Water.

RELIEF

Wherefore, Petitioner respectfully prays that this Court issue writs of quo warranto to Respondents ordering them to show cause why their putative actions complained of herein should not be nullified in their entirety as void *ab initio* due to the myriad, fundamental constitutional and statutory violations that Respondents committed and their having acted outside the authority and jurisdiction of their respective offices.

Dated this 15th day of January, 2003.

JO O. THACKER
COUNTY ATTORNEY

Derek Phillips, Esquire
Florida Bar No. 0487960
Osceola County Attorney's Office
1 Courthouse Square, Suite 4200
Kissimmee, Florida 34741
Vox: (407) 343-2330
Fax: (407) 343-2353
Attorney for Plaintiff, Osceola County

CERTIFICATE OF SERVICE

I, Derek Phillips, certify that I caused a copy of the foregoing to be served upon the following individuals:

Richard I. Lott Esq.,
Miller Canfield *et al.*
25 W. Cedar Street, Suite 500
Pensacola, FL 32501-5945
Attorney for the Florida Water Services Authority

Carl Hoffman, Richard Outzen, Jr. and Clay Ford
By Serving Edwin A. Eddy, City Manager
City of Gulf Breeze
1070 Shoreline Drive
Gulf Breeze, FL 32561

Marilyn Jones, Betty Willey, Buddy Jordan,
R.L. Lewis, Clayton White and Lloyd Hinote
By Serving Donna S. Adams, City Manager
City of Milton
6738 Dixon Street
Milton, FL 32570

J. Lance Reese, Brenda Pollack, Robert Smith
By Serving Matt E. Danheisser, Registered Agent
Gulf Breeze Financial Services, Inc.
504 North Baylen Street
Pensacola, FL 32501

Derek Phillips, Esquire
Florida Bar No. 0487960
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Vox: (407) 343-2330
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Attorney for Plaintiff, Osceola County

STATE OF FLORIDA

OFFICE OF ATTORNEY GENERAL
RICHARD E. DORAN

December 17, 2002

Ms. Jo O. Thacker
Osceola County Attorney
1 Courthouse Square, Suite 4200
Kissimmee, Florida 34741-5488

Dear Ms. Thacker:

You have requested this office to commence a quo warranto action on behalf of the Osceola County Board of County Commissioners.

After reviewing your letter, I must decline to bring the requested action. This response should not be construed to constitute a legal opinion on the merits of this matter.

Sincerely,

Richard E. Doran
Attorney General

EXHIBIT "A"

INTERLOCAL AGREEMENT

This **INTERLOCAL AGREEMENT**, made and entered into as of September 16, 2002, initially by and between **CITY OF GULF BREEZE**, a municipal corporation of the State of Florida (the "Gulf Breeze") and **CITY OF MILTON**, a municipal corporation of the State of Florida ("Milton"),

WITNESSETH:

In consideration of the mutual benefits and obligations assumed herein, the undersigned hereby agree as follows:

Section 1 Findings

The undersigned hereby find, determine and declare as follows:

(A) Milton and Gulf Breeze each own and operate public water and sewer utility systems within and outside their political boundaries, and have determined that there is a substantial need and demand for public ownership and operation of essential purpose public utilities within the State.

(B) Public water and sewer utility systems, including without limitation, potable water development; water production, storage and distribution; alternative water sources; sewerage; water reuse, advance water treatment, water and sewer pre-treatment; sludge removal and waste collection and disposal; environmental recycling; and other similar utility systems contribute to the welfare and benefit of the public, promote economic and personal prosperity.

(C) In order to reduce and relieve the burdens of administrative government currently borne by the parties hereto, and future management and administrative responsibilities attendant to utility systems, the undersigned Participating Governmental Units wish to cooperate by interlocal agreement to jointly exercise, together with other Participating Governmental Units which may join in this agreement from time to time, the powers each Participating Governmental Unit has to facilitate the development, transfer, consolidation, financing, ownership, management, improvement, expansion and operation of the essential public purpose utilities authorized herein.

(D) Pursuant to all of the privileges, benefits, powers and terms of Section 163.01, Florida Statutes, as amended, together with all of the home rule powers granted by the Constitution and laws of the State of Florida, and all other applicable provisions of law (the "Act"), the parties are duly authorized to enter into this Agreement on behalf of themselves and any future Participating Governmental Unit.

(E) The parties have determined that for administrative convenience and efficiencies, and to reduce duplication of efforts and improve services, it is desirable to create a separate legal entity (the "Authority" hereinafter described), for the public purpose of promoting, planning, establishing, financing, acquiring, constructing, equipping, owning, operating, maintaining, repairing, managing, expanding,

EXHIBIT "B"

consolidating, improving, leasing and disposing of Projects (as hereinafter defined) and establishing, implementing, financing and administering Programs (as hereinafter defined) in furtherance of such purposes .

(E) The creation of a special-purpose legal entity for the administration, ownership, operation and management of the public utilities referred to herein will provide economies of scale, increase bargaining power, attract employees with specialized talents and abilities, reduce overhead and provide other financial advantages to the utility operations of the parties, and will improve the level of protection of the environment improve and enhance service to customers.

(G) It is the intent of the parties hereto that the Authority shall have all possible powers which may be conferred upon the Authority pursuant to law which may be necessary or desirable to enable the Authority to acquire, construct, finance, own, manage, operate and dispose of Projects and Programs and to fulfill the objectives and purposes of this Interlocal Agreement.

(H) It is the intent of the parties hereto that the Authority is specifically authorized, in addition to its other powers, to undertake Projects and Programs pursuant to the provisions of the Section 163.01(g)(1), Florida Statutes. It is further the intent of the parties that, pursuant to Section 163.01(5)(o), Florida Statutes, all liabilities incurred by the Authority with respect to the Project and all liabilities resulting from or arising out of or in connection with Projects and Programs (the "Project Liabilities"), shall be the sole responsibility and obligation of the Authority. None of the Participating Governmental Units shall be responsible for any Project Liabilities and no Project Liabilities shall constitute a pledge of the faith and credit or taxing power of or constitute an obligation of any of the Participating Governmental Units.

Section 2 Definitions

As used herein, the capitalized terms shall have the following meanings, unless the context hereof expressly requires otherwise:

"Act" shall have the meaning assigned thereto in Section 1 hereof.

"Agreement" shall mean this Interlocal Agreement and any amendment hereto which may be adopted as hereinafter provided.

"Authority" shall mean the Florida Water Services Authority created by Section 3 of this Agreement.

"Board" means the Authority's Board of Directors, which is its governing body, appointed as hereinafter set forth to operate the Authority.

"Bonds" shall mean any bonds, loans, notes, certificates of indebtedness, time warrants, debentures, lease financing instruments, or other debt instruments, evidences of indebtedness or debt obligations issued by the Authority under the provisions of this Agreement, as supplemented by the provisions of any resolution of the Authority or general or special law, to establish or finance any Program or pay or

finance the cost of the Project or any portion thereof, and payable from the all or any of the following: revenues derived from such Program, from the operation of the Project or any loan payments, lease payments or other receipts in respect thereof or of loaned funds, from any guaranty, insurance or disposition proceeds, from contributions or credit support payments, and/or from any or all funds of the Authority legally available for such purpose.

"Cost" shall mean (i) in respect of a Project, the cost or costs of acquiring, constructing, erecting, improving, expanding, furnishing, equipping and installing the Project, or any portion thereof, and shall include, without limiting the generality of the foregoing, the cost of all labor and materials, the cost of all lands, property, rights, easements and franchises which shall be deemed necessary for the Project, good will, value of going concerns, financing charges, interest prior to and during construction and for a reasonable period after the completion of construction, working capital, architectural and legal expenses, costs of plans, specifications, surveys, estimates of costs and of revenues, discount upon the sale of bonds, if any, municipal bond insurance or credit enhancement, if any, financial products payments, if any, other expenses necessary or incidental to determining the feasibility or practicability of the Project and the financing thereof, administrative expense related solely to the Project and such other expenses as may be necessary, convenient or desirable and incident to such acquisition, construction, erection, improving, expanding, furnishing, equipping, owning, operating, managing and installing of the Project, the placing of the Project in operation and the financing thereof as herein authorized, and (ii) in respect of a Program, the cost or costs of developing and implementing, the Program, the financing of the purposes and objectives of the Program, estimates of costs and of revenues, demand surveys, feasibility reports, appraisals, discount upon the sale of bonds, if any, municipal bond insurance or credit enhancement, if any, other expenses necessary or incidental to determining the feasibility or practicability of the Program and the financing thereof, administrative expense related to the Program and such other expenses as may be necessary or desirable and incident to and such other expenses as may be necessary or desirable and incident to such Program or the financing thereof.

"Local Authority" means any public agency (as defined in Section 163.01, Florida Statutes) that enters into an Interlocal Agreement with the Authority or the Members for the purposes of authorizing the Authority to operate within the jurisdiction of such public agency to finance a Project or Program therein.

"Member" means Gulf Breeze and Milton, as well as any additional Participating Governmental Unit which might hereafter join in this Agreement and the Authority created hereby.

"Participating Governmental Unit" shall mean Gulf Breeze, Milton and other public agencies (as defined in Section 163.01, Florida Statutes) which are or later become signatories to this Agreement for the purpose of facilitating the financing of Projects or Programs.

"Project" shall mean, but shall not be limited to, any one or more or any combination of public utilities, including, without limitation, the following: public utilities as defined in the Act, and any capital improvement described in Chapter 163,

Florida Statutes, any public utility or improvement or expansion thereof that is lawful for acquisition, ownership, operation or management by the Authority under the Act, including any public utility project at the time authorized under Ordinance 5-97, of the City of Gulf Breeze, and any and all real or personal property in connection with same.

"Program" shall mean the plan of finance or financing program for providing funds to finance Projects, or financing mechanism that provide the benefits of public financing to any private, not-for-profit or public organizations to implement or further the purposes and objectives of the Authority.

Section 3 Authority Created and Purpose

Pursuant to the Act, there is hereby created an independent public body corporate and politic of the State of Florida, to be known as the "Florida Water Services Authority" for the purpose of promoting, planning, establishing, financing, acquiring, constructing, equipping, operating, maintaining and leasing the Project, all in the manner provided herein. The Authority may be an entity incorporated under Chapter 617, Florida Statutes, as its directors may determine, but such incorporation shall not be deemed a requirement or condition to its creation hereunder.

Section 4 Powers of the Authority

The Authority shall have the powers to, and all powers necessary and incidental to, accomplish the purpose or objectives of this Agreement, including, without limiting the generality of the foregoing, the power to promote, plan, establish, acquire, construct, erect, finance, expand, improve, consolidate, furnish, equip, operate, maintain, manage, diversify and develop Programs and Projects from time to time, and issue Bonds from time to time to finance the cost thereof. To the extent not inconsistent with general or special law, such powers shall include, but shall not be restricted to, the power to:

(A) Adopt its own rules of procedure, select its officers and set the time and place of its official meetings.

(B) Sue and be sued in its own name and compromise and settle claims by and against it.

(C) Enter into agreements with other Public Agencies for the joint performance, or performance by one unit in behalf of the other, of any of either Authority's authorized purposes.

(D) Enter into contracts and other undertakings necessary or desirable to carry out the purposes of the Authority and to finance Projects and Programs.

(E) Borrow money and issue Bonds for the purpose of providing funds for the Programs and Projects; provided that any such Bonds shall be repayable solely from and may be secured solely by a pledge of (i) the proceeds of such Bonds and the investment earnings on such proceeds prior to the application thereof to the purposes of the Project or the repayment of such Bonds; (ii) all or any portion of the receipts to

be derived from or in connection with any Project or Programs; and (iii) any source of funds derived by the Authority from operation, lease, management or disposition of any Project, or from any Program; **provided, however,** that nothing herein shall authorize the Authority to create any financial obligation on the part of any Participating Governmental Unit, unless such Participating Governmental Unit consents thereto and expressly approves such financial obligation in a separate written instrument entered into with the Authority subsequent to the effective date of this Interlocal Agreement.

(F) Adopt resolutions necessary for the exercise of its powers.

(G) Employ attorneys, architects, engineers, independent financial firms, trust companies, financial consultants, accounting firms and others and to contract or otherwise provide for audits of any of its funds, accounts and financial records.

(H) Own, acquire, purchase, hold, convey, lease, sublease, lease-purchase, mortgage, lend, transfer, exchange, dispose of and encumber any real or personal property necessary or convenient for the purposes of the Authority, with or without consideration.

(I) Operate, maintain, promote, develop, design, support, prepare, acquire, construct, equip, expand, upgrade, renovate, reconstruct and repair any Project or any portion thereof.

(J) Exercise any and all powers, authorities, rights, protections and immunities authorized by this Agreement in the Authority's own name.

(K) Solicit, make claims for, perfect, accept and receive gifts, bequests, funds, grants, aid, assistance or contributions.

(L) Acquire by purchase, business acquisition, stock acquisition or other means, whenever the Authority deems expedient, any facility, wholly or partly constructed, and any franchise, easements, permits and contracts for the construction of any public utility or other Project, upon such terms and at such prices as may be reasonable and can be agreed upon between the Authority and the owner thereof, title to be taken in the name of the Authority or any owned subsidiary or limited liability organization, and issue Bonds to pay the cost of the acquisition of any Project.

(M) To issue any Bonds for any purpose for which any public agency or governmental entity of the State of Florida may lawfully issue Bonds to finance public utilities, Programs and Projects, and to make loans for such purposes to private, not-for-profit and governmental corporations and organizations.

(N) Subject to the limitations set forth in Section 163.01, Florida Statutes, to exercise the power of eminent domain in connection with any Projects, including, without limitation, the procedural powers under Chapters 73 and 74, Florida Statutes, to the fullest extent permitted by law; provided that if any such exercise shall ever be required to be approved by a Participating Governmental Unit, it is agreed that the City of Gulf Breeze shall be the sole unit required to give such approval.

(O) To exercise all powers heretofore or hereafter granted by law to the Authority in respect of the acquisition, construction, ownership, operation, financing and disposition of public utilities, including, without limitation, the powers granted under Section 163.01(7) Florida Statutes.

No enumeration of powers herein shall be deemed exclusive or restrictive, but shall be deemed to incorporate all implied powers necessary or incident to the carrying out of such enumerated powers, including, specifically, authority to employ personnel, borrow and expend funds and enter into contractual obligations, all in furtherance of the Projects or other purposes of the Authority. The Authority shall not have the power to levy or collect taxes, nor the police or other governmental regulatory power, except that the Authority shall have full and plenary power to establish and collect the rates, fees and charges for the various facilities and services of any of its Projects, the power to establish and enforce policies and procedures incident to the operation and administration of its Projects or purposes, and the power to impose, levy, collect and enforce special assessments.

The Authority shall be a public instrumentality of the City of Gulf Breeze and the City of Milton, acting on behalf of such municipalities and imbued with all powers of such municipalities which may lawfully be exercised by either such municipality in furthering the purposes of and objectives hereof. Gulf Breeze shall have the power to remove any director without cause at any time, by furnishing written notice thereof to the Chairman and the Executive Director of the Authority, and such vacated seat on the Authority shall be filled in the same manner as such seat was initially established. Milton shall have the right to remove any director appointed by Milton, and such vacated seat on the Authority shall be filled in the same manner as such seat was initially established.

Section 5 Board of Directors; Organization

(A) The Authority shall be governed by, and its powers, authorities, privileges, rights, protections and immunities exercised and protected by a Board of Directors composed initially of three (3) directors, two appointed by Gulf Breeze and one appointed by Milton. Gulf Breeze may from time to time by resolution change the number of board members, provided (i) the there shall never be less than three nor more than seven directors positions and (ii) at least 20% of the director positions shall be appointees of Milton.

(B) All directors of the Authority shall be deemed to be acting in their official capacity when conducting the business of the Authority. If any director shall cease to serve on the Authority then such person shall be deemed to have vacated his seat on the Authority and such seat shall be filled in the same manner as such seat was initially established.

(C) The Authority shall make all policies for its governance and shall formulate and may amend its own rules or procedures and written bylaws not inconsistent with this Agreement. Unless otherwise established by rules of the Authority, the presence of a majority of the directors eligible to vote shall constitute a quorum; and a majority vote of the total number of directors eligible to vote shall be required to authorize Authority action. Fewer than a quorum may adjourn from time

to time and may compel the attendance of absent directors. The Board of Directors shall select one of its directors as chairperson, another as vice-chairperson, and another as secretary/treasurer and shall prescribe their duties, powers and terms of office.

(D) The Board of Directors shall hold regular meetings at least once each calendar quarter and shall provide in its rules for holding other regular and special meetings. All meetings shall be given public notice and shall be open to the public, and the Authority shall use its best efforts to give notice thereof at least 48 hours prior to any such meeting; except upon emergency for reasons set forth in a declaration filed with records maintained by the Administrator or the secretary/treasurer of the Authority at the time of such meeting. The Authority shall keep a record of its transactions, findings and determinations; and all records of the Authority and its staff shall be public records. Directors of the Authority shall receive compensation for their services in amounts fixed from time to time by the City of Gulf Breeze, and shall be entitled to receive their necessary expenses incurred in the performance of their official duties within the limits of a budget adopted for such purpose by the Authority. Subject to Subsection 7(B) hereof, the Authority shall prepare and adopt, not later than the first day of June of each year, a budget for the next succeeding fiscal year which shall be from the first day of October through and including the last day of September.

(E) The Authority may establish an Advisory Panel ("Advisory Panel") to advise and counsel the Authority with respect to customer service and rate matters of any utility it may acquire or own. The Advisory Panel may consist of members selected by the Authority who may be customers of the utility and/or have expertise in the fields of engineering, environmental, utility rate design, finance, accounting, law, utility operations or other utility related experience. If such an Advisory Panel is established, the members shall be entitled to attend and participate at all meetings of the Authority, where they will be accorded the status of *ex-officio* non-voting members of the Authority. Such Advisory Panel may meet from time to time apart from the Authority meetings, and may establish rules and procedures for such meetings. All meetings and correspondence of the Advisory Panel shall be subject to the Florida Sunshine Laws and Public Records Laws.

(F) The principal place of business of the Authority shall be Gulf Breeze, Florida; ***provided, however,*** that, subject to the requirements of the Florida Government in the Sunshine Law, meetings of the Authority may be conducted at such locations as deemed convenient by the directors, including any location convenient to the business or residence of any director, any location at which a quorum is present, and any location convenient to any service area serve by a utility of the Authority.

(G) Gulf Breeze Financial Services, Inc., or such other entity as may be designated or appointed by Gulf Breeze, shall serve as the initial Administrator for the Authority. In case of the absence, inability or refusal of the Chairman of the Board of the Authority to call any meeting of the Authority, the Administrator shall have the power to establish the times and places for meetings of the Authority. The Administrator shall have the power to arrange for the publication of notices of all meetings of the Authority, and to make all required transcripts and minutes of such

meetings. Notices of all meetings of the Authority shall be distributed in accordance with the requirements of the Florida Government in the Sunshine law, and to the Executive Director of the Authority, the City Managers of Gulf Breeze and Milton, the Administrator and to each Director of the Authority. The Administrator shall have the power to review or investigate any of the management, facilities or operations of the Authority and to make recommendations to the Board with respect to any such matter. The Administrator shall have the power on behalf of the Authority to contract for such services, and engage such professionals and consultants, as may be necessary in the opinion of the Administrator for the acquisition of Projects, to conduct due diligence inquiries and secure financing with respect to such acquisitions and to develop and plan such acquisitions. Nothing herein shall be deemed to prohibit the Authority and its staff from also undertaking any of such matters enumerated in this paragraph. If at any time the Authority shall determine that the services of the Administrator are unnecessary or duplicative, the Authority shall submit to Gulf Breeze an alternative plan for provision of the administrative services. During any period in which such alternative plan shall be in operation following approval of such plan by Gulf Breeze, the provisions herein regarding the Administrator shall be inapplicable to the extent provided in such plan.

(H) Except to the extent otherwise provided by law, any failure on the part of the Administrator or the Authority to comply with the provisions hereof regarding organization of the Authority, composition and office of its members, giving of notices and other administrative matters shall not affect the validity or enforceability of any Bonds of the Authority.

Section 6 Bonds

In addition to the powers granted to the Authority by other provisions of this Agreement, the Authority also shall have the power and it is hereby authorized to provide by resolution, at one time or from time to time, for the issuance of Bonds for the purpose of paying all or a part of the cost of any Project or any portion thereof or to establish and fund any Program. The principal of and interest on such Bonds shall be payable solely from revenues to be derived from the operation of projects and/or any or all funds of the Authority derived from sources other than ad valorem taxation and legally available for such purpose. The Bonds of each issue shall be dated, shall bear interest at such rate or rates, shall mature at such time or times not exceeding forty (40) years from their date or dates, as may be determined by resolution of the Authority, and may be made redeemable before maturity, at the option of the Authority, at such price or prices and under such terms and conditions as may be fixed by the Authority prior to the issuance of the Bonds. The Authority shall determine the form of the Bonds and the interest coupons to be attached thereto, the manner of executing the Bonds and coupons, and shall fix the denomination or denominations of the Bonds and the place or places or payment of the principal thereof and the interest thereon, which may be at any bank or trust company within or without the State of Florida. In case any officer whose signature or a facsimile of whose signature shall appear on any Bonds or coupons shall cease to be such officer before the delivery of such Bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. All Bonds shall have and are hereby declared to be and to have all the qualities and incidents of negotiable instruments under the laws of Florida. Provision

may be made for the registration of any of the Bonds in the name of the owner thereof as to principal alone and also as to both principal and interest, and for the reconversions of any Bonds registered as to both principal and interest into coupon Bonds. Bonds may be issued without regard to any limitation on indebtedness prescribed by any law. The Authority may sell Bonds in such manner, at such interest rate or rates, without limitation, and for such price as it may determine to be for the best interests of the Authority. Prior to the preparation of definitive Bonds, the Authority may, under like restrictions, issue interim receipts, interim certificates, or temporary Bonds, with or without coupons, exchangeable for definitive Bonds when such Bonds have been executed and are available for delivery. The Authority may also provide for the replacement of any Bonds which shall become mutilated, or be destroyed or be lost. Such Bonds may be issued without any other proceedings, or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this Agreement.

In the event that the Authority heretofore acquired or constructed a project and, to pay the cost of such acquisition or construction thereof, shall have issued bonds payable from the funds provided for herein, and in the further event that the Authority shall desire to construct additions, extensions, improvements or betterments to such project or to acquire by purchase or to construct an additional project and to combine such additional project with the project theretofore purchased or constructed, and to refund such outstanding bonds, the Authority may provide for the issuance of a single issue of bonds under the provisions of this Agreement for the combined purposes of refunding such bonds then outstanding and of constructing such additions, extensions, improvements or betterments or of acquiring by purchase or of constructing such additional project, and the principal of and interest on such Bonds shall be payable from the funds pledged therefor and provide herein.

Any holder of Bonds or of any of the coupons attached thereto, except to the extent the rights therein granted may be restricted by resolution of the Authority adopted before the issuance of the Bonds, may be suit, action, mandamus or other proceedings, protect and enforce any and all rights under the laws of Florida or granted hereunder or under such resolution and may enforce and compel the performance of all duties required by this Agreement or by such resolution to be performed by the Authority or by any officer thereof.

The Authority may evidence any borrowing authorized herein by the issuance of its Bonds; provided, however, that any such Bonds shall state on their face that such Bonds shall not be or constitute a general obligation or indebtedness of the Authority, the State of Florida, any political subdivision or municipality thereof, but shall be a limited, special obligation of the Authority, payable solely from the revenues, receipts and other sources available to the Authority. Such Bonds shall further provide that no owner of any such Bonds shall have the right to require or compel the payment of such Bonds except from the sources set forth therein. Nothing in this section shall be deemed to prohibit any Participating Governmental Unit from securing its Lease Agreement with any funds or Bonds which may lawfully be pledged for such purpose.

The parties to this agreement hereby covenant and agree that they will not, either individually or in concert, (i) take any action that would adversely affect the validity or enforceability of any bonds of the Authority and all covenants and

obligations of the Authority, or the tax-exempt status of the bonds, or (ii) impair or limit the ability of the Authority to levy, collect, receive and apply any revenues of the Authority pledged to secure any bonds of the Authority, or (iii) fail to take any action reasonably within the control of such parties, which may, in the opinion of nationally recognized bond counsel, be necessary to maintain, preserve, or assure the validity, enforceability, and, to the extent applicable, the tax-exempt status, of any bonds of the Authority. The parties agree and acknowledge that the holders of any bonds or other obligations for borrowed money shall be beneficiaries of this Agreement.

Section 7 Facilities and Staff Assistance; Disposition of Surpluses

(A) The Participating Governmental Units may cooperate in providing offices and workspaces, equipment and supplies and staff assistance necessary for the use of this Authority. All such non-expendable items shall remain the property of the Participating Governmental Unit furnishing them to the Authority.

(B) So long as the Authority shall own or operate any public utilities, the Authority shall establish, levy and collect sufficient rates, fees and charges for the services and facilities thereof to enable the Authority to include in its annual budget, and to pay over to Gulf Breeze, an amount equal to not less than two percent (2%) of the annual gross revenues of such utilities, but in no event less than $1,500,000.00. Such amount shall be in addition to all amounts otherwise due and payable to Gulf Breeze for services or facilities provided or furnished by Gulf Breeze to the Authority. It is hereby acknowledged and agreed that the obligation of the Authority to transfer any such annual amount to Gulf Breeze shall be payable from the net revenues of such project, after provision has been made for reasonable costs of operation, maintenance capital improvement programs of the Authority, and junior and subordinate to the payment of all bonded indebtedness of the Authority secured by any portion of such net revenues.

(C) In addition to any other transfers of net revenues required herein, the Authority shall transfer to Gulf Breeze such amounts as may be required to be transferred from time to time, as specified by resolution or resolutions of Gulf Breeze, to provide funds for the payment to public agencies having jurisdiction over portions of the service areas of any project, of regulatory fees, reimbursements or taxes, (including contributions or payments in lieu of such amounts) in connection with the facilities and operations of the Authority in such jurisdictions.

(D) Gulf Breeze hereby agrees to promptly remit to Milton twenty percent (20%) of all amounts received by Gulf Breeze from the Authority pursuant to the Subsection 7(B) hereof; provided that computation of the portion due to Milton hereunder shall not take into account the portion of any such transfers from the Authority constituting (i) amounts received by Gulf Breeze for the provision of services, properly allocable administrative overhead, or the sale of assets, to the Authority, and (ii) amounts described in subsection 7(C) above, and (iii) amounts distributed by Gulf Breeze to other public agencies for the purpose of maintaining good will in the operation of the utilities of the Authority.

Section 8 Annual Audit

The Authority shall at least once a year, within one hundred eighty (180) days after the close of its fiscal year or as soon thereafter as may be practicable with due diligence, cause its books, records and accounts to be properly audited by a recognized independent firm of certified public accountants and shall deliver copies of the report thereof to the Participating Governmental Units.

Section 9 Term

The term of this Agreement shall commence upon its execution by Gulf Breeze and Milton and filing in the Official Records as required by Chapter 163, Florida Statutes, and shall continue indefinitely unless terminated as provide herein. The Authority shall exist so long as any portion of any Project is owned by the Authority and shall exist so long as the Authority has obligations outstanding. Any Participating Governmental Unit may withdraw as a Member upon one hundred eighty (180) days notice in writing to the Authority and the other Members. This Agreement may be terminated by the then Member Participating Governmental Unit upon one hundred eighty (180) days written notice to one other, provided, however, that no such termination shall take effect prior to the time payment (or provision for payment, as may be authorized by any contract under which Bonds are issued) of all outstanding Bonds of the Authority has been made and provisions for payment of all obligations of the Authority has been made. Upon termination of this Agreement, all property of any Participating Governmental Unit that has provided such property to the Authority upon condition that it be returned upon dissolution of the Authority shall be so returned thereto, and all other property, and all funds of the Authority not needed to pay the Bonds and other obligations of the Authority, or to operate any Project, shall be distributed in such manner as the City of Gulf Breeze and the Participating Governmental Units have theretofore agreed in writing, or upon their failure to agree, as determined by the City of Gulf Breeze, provided, that Milton shall receive twenty percent of the amount distributed to Gulf Breeze under this Section 9..

Section 10 Other Participating Governmental Units

Other Public Agencies may become Participating Governmental Units and Members of the Authority by entering into a supplemental agreement with the Authority, without necessity of any further approval by Gulf Breeze or Milton, provided that unless otherwise required by law, membership shall not be required of a Local Agency in order to enter into an Interlocal Agreement for the financing of a Project or Program within the jurisdiction of such Local Agency.

Section 11 Validation Authorized

The attorney for the Authority and the Authority's bond counsel, are hereby authorized, but not required, to file proceedings and to take appropriate action, in cooperation with other counsel, for the validation of this agreement and of any Bonds of the Authority herein authorized, and all matters connected therewith in conformity with applicable law.

Section 12 Severability of Invalid Provisions

If any one or more of the covenants, agreements or provisions herein contained shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed severable from the remaining covenants, agreements or provisions and shall in no way affect the validity of any of the other provisions hereto.

Section 13 Counterparts

This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 14 Effective Date; Amendments

This Agreement shall take effect when duly executed by the parties and filed in accordance with law. This Agreement may be amended only by written instrument signed by authorized representatives of the City of Milton and the City of Gulf Breeze; provided, however, that no such amendment which would adversely affect the rights of the holders or owners of any outstanding Bonds of the Authority or of any other Member shall take effect until such time as all necessary consents or approvals with respect to such Bonds shall have been obtained, in the case of the rights of bondholders, or the consents and approvals of the affected Members, in the case of the rights of Members.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers.

CITY OF GULF BREEZE

By: /s/
Mayor

ATTEST:

/s/
City Clerk

CITY OF MILTON

By: /s/
Mayor

ATTEST:

/s/
City Clerk

6524

ASSET PURCHASE AGREEMENT

by and between

FLORIDA WATER SERVICES CORPORATION

and

FLORIDA WATER SERVICES AUTHORITY

Dated as of September 19, 2002

EXHIBIT "C"

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement ("Agreement") is dated as of September ____, 2002, by and between Florida Water Services Authority, a public entity of the State of Florida ("Buyer"), and Florida Water Services Corporation, a Florida corporation ("Seller").

RECITALS

WHEREAS, Seller owns potable water production, supply, treatment, and distribution systems, alternative water systems, wastewater collection, transmission, treatment and disposal systems, and reclaimed water facilities in various incorporated and unincorporated areas in Florida (the "System," as hereinafter defined); and

WHEREAS, Buyer, pursuant to Chapter 163, Florida Statutes, and the Interlocal Agreement dated as of September 16, 2002, creating Buyer (the "Interlocal Agreement") and other applicable laws, has the power and authority to acquire and provide potable water, wastewater, and reclaimed water facilities and to provide service outside of the boundaries of its participating members; and

WHEREAS, various governmental entities have threatened to condemn portions of System of the Seller, including portions of the water, wastewater and reclaimed water utility Facilities of the Seller, and in lieu of condemnation, Buyer desires to acquire all or substantially all of the assets which are used by Seller in providing services through the water, wastewater and reclaimed water Facilities throughout the State of Florida, and to avoid condemnation, Seller has consented to sell those assets to Buyer; and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, the Assets of Seller for the consideration and on the terms and subject to the conditions set forth in this Agreement;

Now therefore, the parties, intending to be legally bound, agree as follows:

1. Definitions and Usage

1.1 Definitions

For purposes of this Agreement, the following terms and variations thereof have the meanings specified or referred to in this Section 1.1:

"Accounts Receivable"-- (a) all customer accounts receivable and other rights to payment from customers of Seller and the full benefit of all security for such accounts or rights to payment; (b) all other accounts or notes receivable of Seller and the full benefit

of all security for such accounts or notes; and (c) any claim, remedy or other right related to any of the foregoing.

"Acquisition Bonds"-- means Bonds issued by the Buyer primarily for the purpose of paying the Purchase Price or installments thereof and anticipated to be in an aggregate amount sufficient to produce Acquisition Bond Net Proceeds in an amount equal to the Purchase Price.

"Acquisition Bonds Net Proceeds' -- means the amount received from the sale of the Acquisition Bonds less all the costs of issuing the Bonds, establishing any required reserves, deducting $29 Million (for the purpose of funding Remedial Capital Projects although it is not required that it be so used), deducting $15,800,000 (for the purpose of funding future capital improvements to the System although it is not required to be so used), deducting an amount for the working capital needs of the Buyer and deducting the costs incurred by the Buyer in connection with the transactions contemplated by this Agreement. In the event that Bonds are issued at more than one time, the above mentioned $44,800,000 will be deducted from the initial Bond issue in order to determine the Acquisition Bond Net Proceeds.

"Appurtenances"-- all privileges, rights, easements, hereditaments and appurtenances belonging to or for the benefit of the Land, including all easements appurtenant to and for the benefit of any Land (a "Dominant Parcel") for, and as the primary means of access between, the Dominant Parcel and a public way, or for any other use upon which lawful use of the Dominant Parcel for the purposes for which it is presently being used is dependent, and all rights existing in and to any streets, alleys, passages and other rights-of-way included thereon or adjacent thereto (before or after vacation thereof) and vaults beneath any such streets.

"Assets" or "Assets to Be Sold"-- as defined in Section 2.1.

"Assignment and Assumption Agreement"-- as defined in Section 2.7(a)(ii).

"Assumed Liabilities"-- as defined in Section 2.4(a).

"Best Efforts"-- the efforts that a prudent Person desirous of achieving a result would use in similar circumstances to achieve that result as expeditiously as possible, provided, however, that a Person required to use Best Efforts under this Agreement will not be thereby required to take actions that would result in a material adverse change in the benefits to such Person of this Agreement and the Contemplated Transactions or to dispose of or make any change to its business, expend any material funds or incur any other material burden.

"Bill of Sale"-- as defined in Section 2.7(a)(i).

"Bonds" shall mean revenue bonds, the interest on which (i) accrues at fixed rates and (ii) is excluded from gross income of the holder thereof for federal income tax purposes, to be issued by the Buyer and payable solely from and secured solely by the Net Revenues of the System and, if consented to by Buyer, other assets of the Buyer.

"Bond Insurer"—any nationally recognized financial institution or insurer of principal and interest on bonds of state and local governments whose bond purchase agreement, letter or line of credit, surety bond, insurance policy or guaranty would result in such bonds being rated in one of the highest two categories by Standard & Poor's or Moody's.

"Breach"-- any breach of, or any inaccuracy in, any representation or warranty or any breach of, or a failure to perform or comply with, any covenant or obligation, in or of this Agreement.

"Business Day"-- any day other than: (a) Saturday or Sunday; or (b) any other day on which banks in Florida are permitted or required to be closed.

"Buyer"-- as defined in the first paragraph of this Agreement.

"Buyer Indemnified Persons"-- as defined in Section 11.2.

"Capital Charges"- revenues, exclusive of Special Assessments, derived by the Buyer from impact fees, guaranteed revenues, service availability fees, or other such fees or charges, imposed upon landowners, builders or developers in connection with the Buyer improvement of property within the services areas of the System, to defray the costs of capital facilities.

"Capital Improvement Plan Requirement"— an annual amount of $25,000,000 for the purpose of providing extraordinary maintenance, rehabilitation, upgrades to equipment or facilities, increased plant capacity, and extensions and enlargements to the System, and excluding well and septic tank conversions.

"Closing"-- as defined in Section 2.6.

"Closing Date"-- the date on which the Closing actually takes place.

"COBRA"-- as defined under Federal Employment Law.

"Code"-- the Internal Revenue Code of 1986.

"Confidential Information"-- as defined in Section 12.1.

"Contemplated Transactions"-- all of the transactions contemplated by this Agreement.

"Cost of Operation and Maintenance"-- all current expenses, paid or accrued, for the operation, maintenance and repair of all Facilities of the System, as calculated in accordance with generally accepted accounting principles for units of local government and on a consistent basis with the operation and maintenance and repair of the Facilities of the System under Seller's ownership, and shall include, without limiting the generality of the foregoing, insurance premiums, administrative expenses of the Buyer related solely to the System, labor, cost of materials, consumables and supplies used for current operation, but excluding any reserve for renewals or replacements, any extraordinary or emergency repairs, any replacements, any capital expenditures, any allowance for interest or depreciation or amortization, any other non-cash item, any profit, any franchise fees, any payments in lieu of taxes, and any voluntary payments to other governmental entities not required by law.

"Customer Deposits"—any amounts deposited with or held by the Seller as customer deposits.

"Damages"-- as defined in Section 11.2.

"Due Diligence Expenses"— a sum up to $200,000 or such greater amount as the Seller may approve in writing, to reimburse the costs incurred by the Buyer for its due diligence expenses in making the decision to acquire the System and issue the Acquisition Bonds for the Purchase Price.

"Effective Time"-- 12:01 am. on the Closing Date.

"Employee Plans"-- as defined in Section 3.13.

"Employment Agreement"-- as defined in Section 2.7(a)(vi).

"Encumbrance"-- any charge, claim, community or other marital property interest, condition, equitable interest, lien, option, pledge, security interest, mortgage, right of way, easement, encroachment, servitude, right of first option, right of first refusal or similar restriction, including any restriction on use, voting (in the case of any security or equity interest), transfer, receipt of income or exercise of any other attribute of ownership.

"Environment"-- soil, land surface or subsurface strata, surface waters (including navigable waters and ocean waters), ground waters, drinking water supply, stream sediments, ambient air (including indoor air), plant and animal life and any other environmental medium or natural resource.

"Environmental, Health and Safety Liabilities"-- any cost, damages, expense, liability, obligation or other responsibility arising from or under any Environmental Law or Occupational Safety and Health Law, including those consisting of or relating to:

(a) any environmental, health or safety matter or condition (including on-site or off-site contamination, occupational safety and health and regulation of any chemical substance or product);

(b) any fine, penalty, judgment, award, settlement, legal or administrative proceeding, damages, loss, claim, demand or response, remedial or inspection cost or expense arising under any Environmental Law or Occupational Safety and Health Law;

(c) financial responsibility under any Environmental Law or Occupational Safety and Health Law for cleanup costs or corrective action, including any cleanup, removal, containment or other remediation or response actions ("Cleanup") required by any Environmental Law or Occupational Safety and Health Law (whether or not such Cleanup has been required or requested by any Governmental Body or any other Person) and for any natural resource damages; or

(d) any other compliance, corrective or remedial measure required under any Environmental Law or Occupational Safety and Health Law.

The terms "removal," "remedial" and "response action" include the types of activities covered by the United States Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

"Environmental Law"-- any Legal Requirement that requires or relates to:

(a) advising appropriate authorities, employees or the public of intended or actual Releases of pollutants or hazardous substances or materials, violations of discharge limits or other prohibitions and the commencement of activities, such as resource extraction or construction, that could have significant impact on the Environment;

(b) preventing or reducing to acceptable levels the Release of pollutants or hazardous substances or materials into the Environment;

(c) reducing the quantities, preventing the Release or minimizing the hazardous characteristics of wastes that are generated;

(d) assuring that products are designed, formulated, packaged and used so that they do not present unreasonable risks to human health or the Environment when used or disposed of;

(e) protecting resources, species or ecological amenities;

(f) reducing to acceptable levels the risks inherent in the transportation of hazardous substances, pollutants, oil or other potentially harmful substances;

(g) cleaning up pollutants that have been Released, preventing the Threat of Release or paying the costs of such clean up or prevention; or

(h) making responsible parties pay private parties, or groups of them, for damages done to their health or the Environment or permitting self-appointed representatives of the public interest to recover for injuries done to public assets.

"ERISA"-- the Employee Retirement Income Security Act of 1974.

"Exchange Act"-- the Securities Exchange Act of 1934.

"Excluded Assets"-- as defined in Section 2.2.

"Facilities"-- the Land, leasehold, license, easement, right-of-way, prescriptive claim or other interest in real property currently owned or operated by Seller or used by the Seller in the operation of the System, including the Tangible Personal Property used or operated by Seller at the respective locations of the Land, and excluding the Excluded Assets.

"GAAP"-- generally accepted accounting principles applicable to the Seller for financial reporting in the United States, applied on a basis consistent with the basis on which the balance sheets and the other financial statements referred to in Section 3.3 were prepared.

"Governing Documents"-- the articles or certificate of incorporation and the bylaws of Sellers.

"Governmental Authorization"-- any consent, license, registration or permit issued, granted, given or otherwise made available by or under the authority of any Governmental Body or pursuant to any Legal Requirement.

"Governmental Body"-- any:

(a) federal, state, local, municipal, or other government;

(b) governmental authority of any nature (including any agency, branch, department, board, commission, court, tribunal or other entity exercising governmental powers); or

(c) body exercising any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power.

"Gross Revenues" or "Revenues" shall mean all moneys, received or receivable by the Buyer, or accruing to it in the operation of the System, from rates, fees, rentals, or other charges for the services or Facilities of the System, excluding state and federal grants and grants in aid of construction, unless otherwise provided herein, all calculated in accordance with generally accepted accounting practice applicable to a local government. "Gross Revenues" or "Revenues" shall also be deemed to include any amounts (exclusive of Capital Charges retained by Seller) received by the Buyer as Capital Charges for any facilities acquired from the Seller, but shall not include Special Assessments or Capital Charges for any facilities not purchased from the Seller.

"Hazardous Activity"-- the distribution, generation, handling, importing, management, manufacturing, processing, production, refinement, Release, storage, transfer, transportation, treatment or use (including any withdrawal or other use of groundwater) of Hazardous Material in, on, under, about or from any of the Facilities or any part thereof into the Environment and any other act, business, operation or thing that increases the danger, or risk of danger, or poses an unreasonable risk of harm, to persons or property on or off the Facilities.

"Hazardous Material"-- any substance, material or waste which is or will foreseeably be regulated by any Governmental Body, including any material, substance or waste which is defined as a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "contaminant," "toxic waste" or "toxic substance" under any provision of Environmental Law, and including petroleum, petroleum products, asbestos, presumed asbestos-containing material or asbestos-containing material, urea formaldehyde and polychlorinated biphenyls.

"Improvements"-- all buildings, structures, fixtures and improvements located on the Land or included in the Assets, including those under construction.

"Indemnified Person"-- as defined in Section 11.9.

"Indemnifying Person"-- as defined in Section 11.9.

"Intellectual Property Assets"-- as defined in Section 3.14.

"Inventories"-- all inventories of Seller, wherever located, including without limitation, all pumps, pipes, valves, plumbing fixtures, chemicals, stored water, spare parts and all other materials and supplies to be used by Seller in the operation of its business.

"IRS"-- the United States Internal Revenue Service and, to the extent relevant, the United States Department of the Treasury.

"Land"-- all parcels and tracts of land in which Seller has a fee ownership interest, except for the parcels and tracts of land set forth in Exhibit 2.2.

"Lease"-- any Real Property Lease or any lease or rental agreement, license, right to use or installment and conditional sale agreement to which Seller is a party and any other Seller Contract pertaining to the leasing or use of any Tangible Personal Property.

"Legal Requirement"-- any federal, state, local, municipal, or other constitution, law, ordinance, principle of common law, code, regulation, or statute.

"Liability"-- with respect to any Person, any liability or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person.

"Material Consents"-- as defined in Section 7.3.

"Maximum Annual Retainage" -- means the sum $12 Million annually.

"Maximum Cumulative Retainage"-- the sum of $36 Million annually.

"Net Revenues" shall mean Gross Revenues less the Cost of Operation and Maintenance.

"Occupational Safety and Health Law"-- any Legal Requirement designed to provide safe and healthful working conditions and to reduce occupational safety and health hazards under the Occupational Safety and Health Act.

"Order"-- any order, injunction, judgment, decree, ruling, assessment or arbitration award of any Governmental Body or arbitrator.

"Ordinary Course of Business"-- an action taken by a Person will be deemed to have been taken in the Ordinary Course of Business only if that action is consistent in nature, scope and magnitude with the past practices of such Person and is taken in the ordinary course of the normal, day-to-day operations of such Person.

"Permitted Encumbrances"-- as defined in Section 3.7.

"Person"-- an individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a Governmental Body.

"Proceeding"-- any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, judicial or investigative, whether formal or informal, whether public or private) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Body or arbitrator.

"Purchase Price"-- as defined in Section 2.3.

"Real Property"-- the Land and Improvements.

"Real Property Lease"-- any ground lease or space lease.

"Record"-- information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"Related Person"-- (a) any Person that directly or indirectly controls, is directly or indirectly controlled by or is directly or indirectly under common control with such specified Person;

(b) any Person that holds a Material Interest in such specified Person;

(c) each Person that serves as a director, officer, partner, executor or trustee of such specified Person (or in a similar capacity);

(d) any Person in which such specified Person holds a Material Interest; and

(e) any Person with respect to which such specified Person serves as a general partner or a trustee (or in a similar capacity).

For purposes of this definition, (a) "control" (including "controlling," "controlled by," and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and shall be construed as such term is used in the rules promulgated under the Securities Act; (b) the "Family" of an individual includes (i) the individual, (ii) the individual's spouse, (iii) any other natural person who is related to the individual or the individual's spouse within the second degree and (iv) any other natural person who resides with such individual; and (c) "Material Interest" means direct or indirect beneficial ownership (as defined in Rule 13d-3 under the Exchange Act) of voting securities or other voting interests representing at least ten percent (10%) of the outstanding voting power of a Person or equity securities or other equity interests representing at least ten percent (10%) of the outstanding equity securities or equity interests in a Person.

"Release"-- any release, spill, emission, leaking, pumping, pouring, dumping, emptying, injection, deposit, disposal, discharge, dispersal, leaching or migration on or into the Environment or into or out of any property.

"Remedial Action"-- all actions, including any capital expenditures, required: (a) to clean up, remove, treat or in any other way address any Hazardous Material or other substance; (b) to prevent the Release or Threat of Release or to minimize the further Release of any Hazardous Material or other substance so it does not migrate or endanger or threaten to endanger public health or welfare or the Environment; (c) to perform pre-remedial studies and investigations or post-remedial monitoring and care; or (d) to bring all Facilities and the operations conducted thereon into compliance with Environmental Laws and environmental Governmental Authorizations.

"Remedial Capital Projects"— capital projects needed to serve existing customers as of the date of Closing that are necessary (i) to repair or replace Facilities that are defective, inoperative, or failing, (ii) to improve or repair the Facilities to the extent that the Facilities are not performing their intended functions in a commercially reasonable and efficient manner, (iii) to replace or improve the Facilities in order to cure any violations of any Governmental Authorizations; and (iv) to perform extraordinary maintenance or deferred maintenance that is necessary to enable the Facilities to perform their intended functions. Remedial Capital Projects shall not include any expansion related capital improvements, normal maintenance or renewal and replacement items normally incurred in the Ordinary Course of Business. Buyer shall have twelve (12) months from the date of Closing to investigate and determine the extent of Remedial Capital Projects existing as of the date of Closing, if any, which determination shall be consistent with prevailing utility industry maintenance practices. On or before the first anniversary of execution of this Agreement, Buyer shall notify Seller in writing of the specific projects and estimated cost for each Remedial Capital Project. Disputes, if any shall be resolved in accordance with Section 13.5.

"Remedial Capital Projects Amount"— an amount sufficient to enable the Buyer to fund all required Remedial Capital Projects for the System as it existed as of the date of the Closing, which amount shall be in excess of the aggregate amount of $29 Million funded for capital improvements as part of the Acquisition Bonds plus the Capital Improvement Plan Requirement for five years and the Renewal and Replacement Requirement for five years.

"Renewal and Replacement Requirement"—an annual amount equal to $5,000,000 to be used for the purpose of paying the cost of renewals, upgrades, enhancements, or the replacement of capital assets of the System and extraordinary and emergency repairs thereto.

"Representative"-- with respect to a particular Person, any director, officer, manager, employee, agent, consultant, advisor, accountant, financial advisor, legal counsel or other representative of that Person.

"Retained Liabilities"-- as defined in Section 2.4(b).

"Seller"-- as defined in the first paragraph of this Agreement.

"Seller Contract"-- any contract, promise, or undertaking: (a) under which Seller has or may acquire any rights or benefits; (b) under which Seller has or may become subject to any obligation or liability; or (c) by which Seller or any of the assets owned or used by Seller is or may become bound or are encumbered.

"Special Assessments" shall mean revenues derived by the Buyer from special assessments imposed upon benefited property in connection with post-Closing acquisition or construction of additions, extensions or improvements to the System.

"Subsidiary"-- with respect to any Person (the "Owner"), any corporation or other Person of which securities or other interests having the power to elect a majority of that corporation's or other Person's board of directors or similar governing body, or otherwise having the power to direct the business and policies of that corporation or other Person (other than securities or other interests having such power only upon the happening of a contingency that has not occurred), are held by the Owner or one or more of its Subsidiaries.

"System" -- shall mean the complete combined and consolidated water, sewer and reclaimed water utility systems of the Seller together with any and all assets, improvements, extensions and additions thereto hereafter constructed or acquired, but not including the Excluded Assets.

"Tangible Personal Property"-- all machinery, equipment, tools, furniture, office equipment, computer hardware, supplies, materials, vehicles and other items of tangible personal property (other than Inventories) of every kind owned or leased by Seller (wherever located and whether or not carried on Seller's books), together with any express or implied warranty by the manufacturers or sellers or lessors of any item or component part thereof and all maintenance records and other documents relating thereto.

"Tax"-- any income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, property, environmental, windfall profit, customs, vehicle, airplane, boat, vessel or other title or registration, capital stock, franchise, employees' income withholding, foreign or domestic withholding, social security, unemployment, disability, real property, personal property, sales, use, transfer, value added, alternative, add-on minimum and other tax, fee, assessment, levy, tariff, charge or duty of any kind whatsoever and any interest, penalty, addition or additional

amount thereon imposed, assessed or collected by or under the authority of any Governmental Body or payable under any tax-sharing agreement or any other contract.

"Tax Return"-- any return (including any information return), report, statement, schedule, notice, form, declaration, claim for refund or other document or information filed with or submitted to, or required to be filed with or submitted to, any Governmental Body in connection with the determination, assessment, collection or payment of any Tax or in connection with the administration, implementation or enforcement of or compliance with any Legal Requirement relating to any Tax.

"Third Party"-- a Person that is not a party to this Agreement.

"Third-Party Claim"-- any claim against any Indemnified Person by a Third Party, whether or not involving a Proceeding.

"Threat of Release"-- a reasonable likelihood of a Release that may require action in order to prevent or mitigate damage to the Environment that may result from such Release.

"Unbilled Customer Revenue" – revenue for services provided to customers that have not yet been billed as of the date of Closing, calculated on a basis consistent with Seller's current billing practices.

1.2 Usage

(a) Interpretation. In this Agreement, unless a clear contrary intention appears:

(i) the singular number includes the plural number and vice versa;

(ii) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are not prohibited by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;

(iii) reference to any gender includes each other gender;

(iv) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;

(v) "hereunder," "hereof," "hereto," and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article, Section or other provision hereof;

(vi) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term;

(vii) with respect to the determination of any period of time, "from" means "from and including" and "to" means "to but excluding"; and

(viii) references to documents, instruments or agreements shall be deemed to refer as well to all addenda, exhibits, schedules or amendments thereto.

(b) Accounting Terms and Determinations. Unless otherwise specified herein, all accounting terms used herein shall be interpreted and all accounting determinations hereunder shall be made in accordance with GAAP, as the same applies to the Seller, and in accordance with generally accepted accounting principles applicable to units of local government, as the same applies to the Buyer.

(c) Legal Representation of the Parties. This Agreement was negotiated by the parties with the benefit of legal representation, and any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any party shall not apply to any construction or interpretation hereof.

2. Sale and Transfer of Assets; Closing

2.1 Assets To Be Sold

Upon the terms and subject to the conditions set forth in this Agreement, at the Closing, but effective as of the Effective Time, Seller shall sell, convey, assign, transfer and deliver to Buyer, and Buyer shall purchase and acquire from Seller, free and clear of any Encumbrances (except as to Appurtenances to the extent provided for elsewhere herein) other than Permitted Encumbrances, all of Seller's right, title and interest in and to all of Seller's property and assets, real, personal or mixed, tangible and intangible, of every kind and description, wherever located, including the following (but excluding the Excluded Assets):

(a) all Real Property and all Appurtenances;

(b) all Tangible Personal Property;

(c) all Inventories;

(d) all Accounts Receivable and Unbilled Customer Revenue;

(e) all Seller Contracts and all outstanding offers or solicitations made by or to Seller to enter into any Contract;

(f) all Governmental Authorizations and all pending applications therefor or renewals thereof, in each case to the extent transferable to Buyer;

(g) all data and Records related to the operations of Seller, including client and customer lists and Records, all personnel records (provided that Seller shall have reasonable access thereto) referral sources, research and development reports and Records, production reports and Records, service and warranty Records, equipment logs, operating guides and manuals, financial and accounting Records, creative materials, advertising materials, promotional materials, studies, reports, correspondence and other similar documents and Records and, subject to Legal Requirements;

(h) all of the intangible rights and property of Seller, including Intellectual Property assets, the trade name, "Florida Water Services", going concern value, goodwill, telephone, telecopy and e-mail addresses and listings;

(i) all claims of Seller against third parties relating to the Assets, whether choate or inchoate, known or unknown, contingent or non-contingent; and

(j) all rights of Seller relating to deposits and prepaid expenses, claims for refunds and rights to offset in respect thereof and that are not excluded under Section 2.2, and not including Seller letters of credit for which the Seller is an applicant.

All of the property and assets to be transferred to Buyer hereunder are herein referred to collectively as the "Assets" or "Assets to be Sold".

2.2 Excluded Assets

Notwithstanding anything to the contrary contained in Section 2.1 or elsewhere in this Agreement, the following assets of Seller (collectively, the "Excluded Assets") are not part of the sale and purchase contemplated hereunder, are excluded from the Assets and shall remain the property of Seller after the Closing:

(a) all cash, cash equivalents and short-term investments; all payments (other than Customer Deposits) received by Seller prior to Closing;

(b) Capital Charges received after the Closing by Buyer which shall be remitted to Seller in each one-year period following the date of the Closing, provided that (i) the total amount of Capital Charges retained by and belonging to Seller for any one such year shall not exceed the Maximum Annual Retainage (and at such time as the total amount of Capital Charges remitted to Seller for any such one year period equals the Maximum Annual Retainage, all further Capital Charges received by the System in such year shall be retained by and belong to the Buyer), and (ii) the aggregate amount retained by the Seller as Excluded Assets pursuant to this subsection 2.2(b) shall be the Maximum Cumulative Retainage and at such time as the total cumulative amount of Capital Charges remitted to Seller under this Section 2.2 equals the Maximum Cumulative

Retainage, no further Capital Charges shall be remitted to the Seller but all such Capital Charges received by the System thereafter be retained by and shall belong to the Buyer. The foregoing Capital Charges retained by Seller are to compensate Seller for the excess capacity existing in the System as of the Effective Date. The amount to be remitted to Seller hereunder by Buyer shall be paid to Seller once a year, commencing 13 months after the Effective Date, for all amount collected during the 12 month period then ended. Seller authorizes Buyer to collect the Capital Charges on behalf of Seller.

(c) all minute books, stock Records and corporate seals;

(d) any shares of capital stock of Seller held in treasury;

(e) Seller's letters of credit outstanding at the date of Closing.;

(f) all insurance policies and rights thereunder (except to the extent specified in Section 2.1(i) and (j));

(g) all of the contracts listed in Exhibit 2.2;

(h) Records that Seller is required by law to retain in its possession;

(i) all claims for refund of Taxes and other governmental charges of whatever nature;

(j) all rights in connection with and assets of any Employee Plans; and

(k) all rights of Seller under this Agreement, the Bill of Sale, the Assignment and Assumption Agreement; and

(l) the property and assets expressly designated in Exhibit 2.2.

2.3 Consideration

(A) Installment Payments. The consideration for the Assets will be four hundred seventy-one million ($471,000,000), as may be adjusted as provided below in subsection 2.3(C) (the "Purchase Price"). The Purchase Price will be payable in Installments delivered by wire transfer from Buyer to Seller as follows:

Date Payable	Installment	Amount Due
At the Closing	Installment 1	$433,000,000
On the third anniversary date of the closing	Installment 2	$38,000,000

(B) Annual Net Revenue Deferral. Seller and Buyer have prepared a pro forma based upon the current Costs of Operation and Maintenance of the System and the

current schedule of rates, fees and charges for the services of the System (without any rate increases, but adjusted for indexing) a copy of which is attached hereto as Exhibit Z.

Based on the pro forma, the parties anticipate that the Buyer will realize Net Revenues in each of the first four 12 month periods following the Closing ("Test Year(s)") sufficient to (i) fund the Renewal and Replacement Requirement, (ii) fund (iii) the Capital Improvement Plan Requirement pay 30 year level debt service on the Acquisition Bonds, and (iv) provide Buyer with net profits of $4.5 Million. The remaining bond proceeds for capital improvements funded in the Acquisition Bonds, plus interest earnings on such bond proceeds, may be allocated to fund short falls in the Capital Improvement Requirement in each of the Test Years in such amounts as may be necessary to meet such Test Year's Net Revenues test (the "Capital Funds Allocation").

Each year, Buyer and Seller will review the Net Revenues. In the event Buyer determines that Net Revenues, together with any revenue guarantee payments pursuant to subsection (E) below, are not sufficient to provide all of such amounts in clauses (i) through (iv) of the preceding sentence, the Buyer shall notify the Seller of such determination, and confer with the Buyer's underwriter and Seller to set forth in full its reasoning therefore. At the end of 36 months following the Closing, such portions of Installment 2 shall be deferred one year or such time as necessary so that the Installment will be equal to Net Revenues less the amounts set forth in (i) through (iv) in the preceding paragraph. Notwithstanding the above, the balance of any unpaid Purchase Price as a result of this subsection shall be paid to Seller within five (5) years of the date of Closing.

(C) Purchase Price Adjustments. Installment 2 of the Purchase Price may be reduced under the following circumstances:

(i) the amount necessary to fund any indemnity amounts owed by Seller under Article 11 hereunder, and

(ii) for all Remedial Capital Projects Amounts.

Within 20 days of the execution of this Agreement, Seller will provide Buyer with its' current five year capital improvement program. Buyer shall notify Seller in writing of the Remedial Capital Projects Amount, if any. Seller shall identify the projects and estimated costs that comprise the Remedial Capital Projects Amount which are not included on Seller's five year capital improvement program. If Seller does not concur that a project is a Remedial Capital Project or part of the Capital Improvement Plan Requirement during the initial five year post Closing time period the matter shall be submitted to the dispute resolution process set forth in 13.5.

(D) Dispute Resolution. Prior to implementing any reduction or offset, the Buyer shall provide written notice to Seller of any proposed reduction or offset. Seller shall have twenty (20) days to provide Buyer written notice of objection to any such reductions or offset. Buyer and Seller shall have sixty (60) days following written notice of objection from Buyer to amicably resolve Buyer's objections. To the extent any objections cannot be reconciled, either party may submit such objection to the Dispute Resolution Process. Buyer may at any time deposit any Reduction Amount with an escrow agent pending a final resolution under the Dispute Resolution Process, pursuant to an Escrow Agreement reasonably satisfactory to the parties and to the extent Buyer has done so Buyer shall not be deemed in default hereunder.

(E) Seller shall provide a guarantee ("Guarantee") in the form to be agreed upon with 30 days after execution of this Agreement that Buyer will receive Gross Revenues constituting monthly water and sewer charges ("Monthly Fees") for the first twelve months after Closing of $95,318,000; for the second twelve months of $97,701,000; and for the third twelve months of $100,143,000. If the Buyer lowers any Monthly Fees during the forgoing time periods, the amount guaranteed will be reduced by the amount the Monthly Fees would have been if such reduction had not occurred.

(F) The Buyer agrees to use all reasonable commercial efforts to issue the Acquisition Bonds. In the event the Buyer, after consultation with the Buyer's financial advisor(s), underwriter(s), legal advisors, and with Seller, in good faith, determines that some or all of such Acquisition Bonds cannot be sold on a date that permits the Closing to occur on or prior to December 15, 2002, in that the Acquisition Bonds Net Proceeds would be less than $433,000,000, then the Buyer shall immediately notify Seller in writing of such determination, with such notice setting forth in reasonable detail the bases upon which such determination was made, and the requirements, if reasonably ascertainable to Seller, for ultimate issuance of all of the Bonds or such portion thereof that would result in Acquisition Bond Net Proceeds received in an amount equal to or greater than $433,000,000 on or prior to December 15, 2002. Upon receipt of such notice Seller shall have the option of (1) at any time between the receipt of the notice and the issuance of the Bonds, closing the transaction, and increasing the future installments set forth above by the amount that the Acquisition Bonds Net Proceeds are less than $433,000,000 in an equitable manner as agreed to by both Buyer and Seller; (2) postponing the Closing until such time as Acquisition Bonds resulting in Acquisition Bonds Net Proceeds of not less than $433,000,000 can reasonably be issued in accordance with this Agreement; or (3) canceling this Agreement, and, if cancelled, thereupon the Buyer and Seller shall have no liabilities and no further obligations to each other under this Agreement, except that Seller shall pay to Buyer the Due Diligence Expenses.

For purposes of this Section 2.3(b), the Capital Charges remitted to and retained by Seller shall not include the portion thereof representing AFPI, to the extent of the following:

Period	Percentage of AFPI
for Capital Charges received until the first anniversary date of the Closing	0%
for Capital Charges received until the second anniversary date of the Closing	20%
for Capital Charges received until the third anniversary date of the Closing	40%
for Capital Charges received until the fourth anniversary date of the Closing	60%
for Capital Charges received until the fifth anniversary date of the Closing	80%
and thereafter	100%

2.4 Liabilities

(a) Assumed Liabilities. On the Closing Date, but effective as of the Effective Time, the Buyer shall assume and agree to discharge only the following Liabilities of Seller (the "Assumed Liabilities"):

(i) any account payable (other than an account payable to any Related Person of Seller) arising with respect to the System, that remains unpaid at and is not delinquent as of the Effective Time but only to extent it is included to determine the Final True Up as set forth in Section 2.7(c);

(ii) any account payable arising with respect to the System, (other than a account payable to any Related Person of Seller) incurred by Seller in the Ordinary Course of Business between the date of this Agreement and the Effective Time that remains unpaid at and is not delinquent as of the Effective Time but only to extent it is included to determine the Final True Up as set forth in Section 2.7(c);

(iii) any Liability to Seller's customers (other than an account payable) incurred by Seller in the Ordinary Course of Business outstanding as of the Effective Time, including, but not limited to Customer Deposits, (other than any

Liability arising out of or relating to a Breach that occurred prior to the Effective Time);

(iv) any Liability arising after the Effective Time under the Seller Contracts (other than any Liability arising under the contracts described on Exhibit 2.2 or arising out of or relating to a Breach that occurred prior to the Effective Time); any Liability of Seller arising after the Effective Time under any Seller Contract included in the Assets that is entered into by Seller after the date hereof in the Ordinary Course of Business or in accordance with the provisions of this Agreement (other than any Liability arising out of or relating to a Breach that occurred prior to the Effective Time), and

(v) any Liability of Buyer under this Agreement or any other document executed in connection with the Contemplated Transactions, and

(vi) any Liability of Buyer based upon Buyer's acts or omissions occurring after the Effective Time, and

(vii) any Liability arising after Closing from operation of the System.

(b) Retained Liabilities. The Retained Liabilities shall remain the sole responsibility of and shall be retained, paid, performed and discharged solely by Seller. "Retained Liabilities" shall mean all Liabilities other than Assumed Liability.

2.5 Allocation

Seller shall prepare and deliver IRS Form 8594 to Buyer within forty-five (45) days after the Closing Date to be filed with the IRS. In any Proceeding related to the determination of any Tax, neither Buyer nor Seller shall contend or represent that such allocation is not a correct allocation.

2.6 Closing

The purchase and sale provided for in this Agreement (the "Closing") will take place at the offices of Buyer's counsel commencing at 10:00 a.m. (local time) on or before December 15, 2002, unless Buyer and Seller otherwise agree. Subject to the provisions of Section 9, failure to consummate the purchase and sale provided for in this Agreement on the date and time and at the place determined pursuant to this Section 2.6 will not result in the termination of this Agreement and will not relieve any party of any obligation under this Agreement. In such a situation, the Closing will occur as soon as practicable, subject to Section 9.

2.7 Closing Obligations

In addition to any other documents to be delivered under other provisions of this Agreement, at the Closing:

(a) Seller shall deliver to Buyer, together with funds sufficient to pay all Taxes necessary for the transfer, filing or recording thereof:

(i) a bill of sale for all of the Assets that are Tangible Personal Property in the form to be agreed upon by the parties prior to Closing (the "Bill of Sale") executed by Seller and the guaranty;

(ii) an assignment of all of the Assets that are intangible personal property in the form to be agreed upon by the parties prior to Closing , which assignment shall also contain Buyer's undertaking and assumption of the Assumed Liabilities (the "Assignment and Assumption Agreement") executed by Seller;

(iii) for each interest in Real Property identified on Exhibit 3.7(a) and (b), a recordable special warranty deed; for all easement interests, an assignment of easements without warranty; for each leasehold interest, an assignment of lease, or such other appropriate document or instrument of transfer, as the case may require, together with a general assignment by the Seller of any and all rights or interests Seller may otherwise have or hold (whether by license, permit, prescriptive right, or otherwise) in respect of its operation of the System, to occupy, use, traverse, spray, percolate through, burrow under, each in form and substance satisfactory to Buyer and its counsel and executed by Seller;

(iv) assignments of all Intellectual Property Assets executed by Seller in form reasonably satisfactory to Buyer;

(v) such other deeds, bills of sale, assignments, certificates of title, documents and other instruments of transfer and conveyance as may reasonably be requested by Buyer, each in form and substance agreed upon by the parties prior to Closing, executed by Seller;

(vi) employment agreements in the form to be prepared by Buyer in accordance with the provisions of this Agreement, executed by such members of Seller's senior management team as identified by Buyer in writing within ten business days after execution of this Agreement (the "Employment Agreements");

(vii) assignments of all construction work in progress in form reasonably acceptable to Buyer which have not yet been placed in service as of the date of the Closing (such capital improvements which have been placed in service being part of the Facilities which are otherwise conveyed by Seller hereunder);

(viii) a certificate executed by Seller as to the accuracy of its representations and warranties as of the date of this Agreement and as of the Closing in accordance with Section 7.1 and as to its compliance with and performance of their covenants and obligations to be performed or complied with at or before the Closing in accordance with Section 7.2; and

(ix) a certificate of the Secretary of Seller certifying, as complete and accurate as of the Closing, attached copies of the Governing Documents of Seller, certifying and attaching all requisite resolutions or actions of Seller's board of directors and shareholders approving the execution and delivery of this Agreement and the consummation of the Contemplated Transactions and certifying to the incumbency and signatures of the officers of Seller executing this Agreement and any other document relating to the Contemplated Transactions.

(b) Buyer shall deliver to Seller:

(i) Installment 1 of Four Hundred Thirty-Three Million dollars ($433,000,000) plus or minus such other funds as set forth on a closing statement to be agreed upon between Buyer and Seller pursuant to the terms of this Agreement by wire transfer to a domestic account of a United States bank specified by the closing Seller in a writing delivered to Buyer at least three (3) business days prior to the Closing Date;

(ii) the Assignment and Assumption Agreement executed by Buyer;

(iii) the executed Employment Agreements ;

(iv) a certificate executed by Buyer as to the accuracy of its representations and warranties as of the date of this Agreement and as of the Closing in accordance with Section 8.1 and as to its compliance with and performance of its covenants and obligations to be performed or complied with at or before the Closing in accordance with Section 8.2; and

(v) a certificate of the Secretary of Buyer certifying, as complete and accurate as of the Closing, attached copies of the Governing Documents of Buyer and certifying and attaching all requisite resolutions or actions of Buyer's governing board approving the execution and delivery of this Agreement and the consummation of the Contemplated Transactions and certifying to the incumbency and signatures of the officers of Buyer executing this Agreement and any other document relating to the Contemplated Transactions.

(c) As additional consideration for the transaction the determination of the following (the "Final True Up") will take place between 120 and 140 days after the Closing and, in the event that the parties cannot agree on the foregoing, then either party

may submit such dispute to the Dispute Resolution Process. To the extent that Eligible Accounts (as hereinafter defined) and Eligible Unbilled Revenues (as hereinafter defined) sold to the Seller hereunder as of the Effective Time minus accounts payable assumed by the Buyer hereunder as of the Effective Time ("Final Computed Amount") is in an amount greater than zero ($0) Dollars, then the Buyer shall immediately pay to the Seller the difference and to the extent that the Final Computed Amount is less than zero ($0) Dollars, then the Seller shall immediately pay to the Buyer the difference. The payment in the foregoing sentence shall be net of any payments made pursuant to the second sentence of this Section. "Eligible Accounts" means Accounts Receivable outstanding as of the Effective Time that are actually collected by the Buyer within 90 days after the Effective Time and "Eligible Unbilled Accounts" means Unbilled Accounts outstanding as of the Effective Time that are actually collected by the Buyer within 120 days after the Effective Time.

(d) At the Closing, the Buyer shall have received (i) an opinion of counsel acceptable to the Buyer stating that neither the City of Gulf Breeze nor the City of Milton will be held liable, as a matter of law, for the liabilities of the Buyer and (ii) an opinion of counsel acceptable to the Buyer stating that upon the acquisition of the System by the Buyer, the rates, fees and charges for the services and facilities of the System are not subject to regulation by the Florida Public Service Commission or any local regulatory authority.

2.8 Consents

(a) If there are any Material Consents that have not yet been obtained (or otherwise are not in full force and effect) as of the Closing, in the case of each Seller Contract as to which such Material Consents were not obtained (or otherwise are not in full force and effect) (the "Restricted Material Contracts"), Buyer may waive the closing conditions as to any such Material Consent and either:

(i) elect to have Seller continue its efforts to obtain the Material Consents; or

(ii) elect to have Seller retain that Restricted Material Contract and all Liabilities arising therefrom or relating thereto; or

(iii) elect to have Seller require any other obligations under such contract to perform their obligations under such contract and remit to Seller the amounts due to such obligations, for payment by the Seller to such obligations.

If Buyer elects to have Seller continue its efforts to obtain any Material Consents and the Closing occurs, notwithstanding Sections 2.1 and 2.4, neither this Agreement nor the Assignment and Assumption Agreement nor any other document related to the consummation of the Contemplated Transactions shall constitute a sale, assignment,

assumption, transfer, conveyance or delivery or an attempted sale, assignment, assumption, transfer, conveyance or delivery of the Restricted Material Contracts, and following the Closing, the parties shall use Best Efforts, and cooperate with each other, to obtain the Material Consent relating to each Restricted Material Contract as quickly as practicable. Pending the obtaining of such Material Consents relating to any Restricted Material Contract, the parties shall cooperate with each other in any reasonable and lawful arrangements designed to provide to Buyer the benefits of use of the Restricted Material Contract for its term (or any right or benefit arising thereunder, including the enforcement for the benefit of Buyer of any and all rights of Seller against a third party thereunder). Once a Material Consent for the sale, assignment, assumption, transfer, conveyance and delivery of a Restricted Material Contract is obtained, Seller shall promptly assign, transfer, convey and deliver such Restricted Material Contract to Buyer, and Buyer shall assume the obligations under such Restricted Material Contract assigned to Buyer from and after the date of assignment to Buyer pursuant to a special-purpose assignment and assumption agreement substantially similar in terms to those of the Assignment and Assumption Agreement (which special-purpose agreement the parties shall prepare, execute and deliver in good faith at the time of such transfer, all at no additional cost to Buyer).

(b) If there are any Consents not listed on Exhibit 7.3 necessary for the assignment and transfer of any Seller Contracts to Buyer (the "Nonmaterial Consents") which have not yet been obtained (or otherwise are not in full force and effect) as of the Closing, Buyer shall elect at the Closing, in the case of each of the Seller Contracts as to which such Nonmaterial Consents were not obtained (or otherwise are not in full force and effect) (the "Restricted Nonmaterial Contracts"), whether to:

(i) accept the assignment of such Restricted Nonmaterial Contract, in which case, as between Buyer and Seller, such Restricted Nonmaterial Contract shall, to the maximum extent practicable and notwithstanding the failure to obtain the applicable Nonmaterial Consent, be transferred at the Closing pursuant to the Assignment and Assumption Agreement as elsewhere provided under this Agreement; or

(ii) reject the assignment of such Restricted Nonmaterial Contract, in which case, notwithstanding Sections 2.1 and 2.4, (A) neither this Agreement nor the Assignment and Assumption Agreement nor any other document related to the consummation of the Contemplated Transactions shall constitute a sale, assignment, assumption, conveyance or delivery or an attempted sale, assignment, assumption, transfer, conveyance or delivery of such Restricted Nonmaterial Contract, and (B) Seller shall retain such Restricted Nonmaterial Contract and all Liabilities arising therefrom or relating thereto.

3. Representations and Warranties of Seller

Seller represents and warrants to Buyer as of the Exhibit Delivery Date (as hereinafter defined) as follows:

3.1 Organization And Good Standing

(a) Seller is qualified to do business in the State of Florida. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida, with full corporate power and authority to conduct its business as it is now being conducted, to own or use the properties and assets that it purports to own or use, and to perform all its obligations under the Agreement. Complete and accurate copies of the Governing Documents of Seller, as currently in effect, will be provided to Buyer prior to Closing. .

(b) Seller has no Subsidiary and, except as disclosed to Buyer in writing prior to Closing, does not own any shares of capital stock or other securities of any other Person.

3.2 Enforceability; Authority; No Conflict

(a) This Agreement constitutes the legal, valid and binding obligation of Seller, enforceable against it in accordance with its terms and each of Seller's Closing Documents will constitute the legal, valid, and binding obligation of Seller, enforceable against Sellers. Seller has the absolute and unrestricted right, power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement, and such action has been duly authorized by all necessary action by Seller's shareholders and board of directors.

(b) Neither the execution and delivery of this Agreement nor the consummation or performance of any of the Contemplated Transactions will, directly or indirectly (with or without notice or lapse of time):

(i) Breach (A) any provision of any of the Governing Documents of Seller or (B) any resolution adopted by the board of directors or the shareholders of Seller;

(ii) except as disclosed in Exhibit 3.5, Breach any provision of, or give any Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or payment under, or to cancel, terminate or modify, any Seller Contract; or

(iii) result in the imposition or creation of any Encumbrance upon or with respect to any of the Assets.

(c) Except as provided under Section 367.071, Florida Statutes, and applicable equivalent County Regulatory provisions, Seller is not required to give any notice to or obtain any material consent from any Person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the Contemplated Transactions except as set forth in Exhibit 3.2(c).

3.3 Financial Statements

Seller has delivered or made available to Buyer: (a) an audited balance sheet of Seller as at December 31, 2001, 2000 and 1999 (including the notes thereto, the "Balance Sheet"), and the related audited statements of income, changes in shareholders' equity and cash flows for the fiscal year then ended, including in each case the notes thereto, together with the report thereon of Price Waterhouse Coopers, independent certified public accountants; and (b) an unaudited balance sheet of Seller as at July 31, 2002 (the "Interim Balance Sheet") and the related unaudited statement of income. Such financial statements fairly present the financial condition and the results of operations, changes in shareholders' equity and cash flows of Seller as of the respective dates of and for the periods referred to in such financial statements, all in accordance with GAAP.

3.4 Sufficiency of Assets

The Assets (a) constitute all of the assets, tangible and intangible, of any nature whatsoever, necessary to operate Seller's business in the manner presently operated by Seller and (b) include all of the operating assets of Seller.

3.5 Description of Land

Exhibit 3.5 contains a description of the Land.

3.6 Description of Leased Real Property

Exhibit 3.6 contains a description of the Leased Real Property.

3.7 Title to Assets; Encumbrances

(a) Seller owns good and marketable title to its respective estates in the Land, free and clear of any Encumbrances, other than:

(i) liens for Taxes for the current tax year which are not yet due and payable; and

(ii) those described in Exhibit 3.7 ("Real Estate Encumbrances").

To the extent in Seller's possession, true and complete copies of (A) all deeds, existing title insurance policies and surveys of or pertaining to the Real Property and (B)

all instruments, agreements and other documents evidencing, creating or constituting any Real Estate Encumbrances will be made available to Buyer promptly. Seller warrants to Buyer that, at the time of Closing, the Land shall be free and clear of all Real Estate Encumbrances other than those identified on Exhibit 3.7 as reasonably acceptable to Buyer ("Permitted Real Estate Encumbrances").

(b) Seller owns good and transferable title to all of the other Assets free and clear of any Encumbrances other than those described in Exhibit 3.7 ("Non-Real Estate Encumbrances"). Seller warrants to Buyer that, at the time of Closing, all other Assets shall be free and clear of all Non-Real Estate Encumbrances other than those identified on Exhibit 3.7 and which are reasonably acceptable to Buyer ("Permitted Non-Real Estate Encumbrances" and, together with the "Permitted Real Estate Encumbrances, "Permitted Encumbrances").

Seller makes no representations regarding title to or the sufficiency of Appurtenances to the Real Estate.

3.8 Taxes

(a) Tax Returns Filed and Taxes Paid. Seller has filed or caused to be filed on a timely basis all Tax Returns and all reports with respect to Taxes that are or were required to be filed pursuant to applicable Legal Requirements. All Tax Returns and reports filed by Seller are true, correct and complete. Seller has paid, or made provision for the payment of all Taxes that have or may have become due for all periods covered by the Tax Returns or otherwise, or pursuant to any assessment received by Seller, except such Taxes, if any, as are listed in Part 3.14(a) and are being contested in good faith. No claim has been made or is expected to be made by any Governmental Body in a jurisdiction where Seller does not file Tax Returns that it is or may be subject to taxation by that jurisdiction. There are no Encumbrances on any of the Assets that arose in connection with any failure (or alleged failure) to pay any Tax, and Seller has no knowledge of any basis for assertion of any claims attributable to Taxes which, if adversely determined, would result in any such Encumbrance.

(b) Buyer agrees to comply with the requirements of Section 196.295, Florida Statutes, Advalorem and Personal Property Taxes.

(c) Specific Potential Tax Liabilities and Tax Situations.

(i) Withholding. All Taxes that Seller is or was required by Legal Requirements to withhold, deduct or collect have been or will be duly withheld, deducted and collected and, to the extent required, have been paid to the proper Governmental Body or other Person.

3.9 Compliance With Legal Requirements; Governmental Authorizations

(a) Except as set forth in Exhibit 3.11, without representation that items on Exhibit 3.11 are Material:

(i) To Seller's knowledge, Seller is in compliance with each Legal Requirement that is applicable to it or to the conduct or operation of its business or the ownership or use of any of its assets;

(ii) No event has occurred or circumstance exists that (A) may constitute or result in a violation by Seller of, or a failure on the part of Seller to comply with, any Legal Requirement or (B) may give rise to any obligation on the part of Seller to undertake, or to bear all or any portion of the cost of, any remedial action of any nature; and

(iii) Seller has not received any notice or other communication (whether oral or written) from any Governmental Body or any other Person regarding (A) any actual, alleged, possible or potential violation of, or failure to comply with, any Legal Requirement or (B) any actual, alleged, possible or potential obligation on the part of Seller to undertake, or to bear all or any portion of the cost of, any remedial action of any nature.

(b) Exhibit 3.11(b) contains a complete and accurate list of each Governmental Authorization that are held by Seller or that otherwise relates to Seller's business or the Assets. To Seller's knowledge, the Governmental Authorizations listed are valid and in full force and effect.

(i) Seller is in material compliance with all of the Material terms and requirements of the Governmental Authorizations;

(ii) No event has occurred or circumstance exists that may (A) constitute or result directly or indirectly in a material violation of or a material failure to comply with any material term or requirement of any Governmental Authorization or (B) result directly or indirectly in the revocation, withdrawal, suspension, cancellation or termination of, or any modification to, any material Governmental Authorization;

(iii) Seller has not received any notice or other communication (whether oral or written) from any Governmental Body or any other Person regarding (A) any actual, alleged, possible or potential violation of or failure to comply with any term or requirement of any Governmental Authorization or (B) any actual, proposed, possible or potential revocation, withdrawal, suspension, cancellation, termination of or modification to any Governmental Authorization, ***other than*** such violations, failures, revocations, withdrawals, suspensions, cancellations,

terminations or modifications as have either been resolved with such Governmental Body or Person, or are not material to the successful operation of the System or to the results of such operations; and

(iv) To the best of Seller's knowledge, all applications required to have been filed for the renewal of the material Governmental Authorizations have been duly filed on a timely basis with the appropriate Governmental Bodies, and all other Material filings required to have been made with respect to such Governmental Authorizations have been duly made on a timely basis with the appropriate Governmental Bodies.

The Governmental Authorizations collectively constitute the Governmental Authorizations necessary to permit Seller to lawfully conduct and operate its business in the manner in which it currently conducts and operates such business and to permit Seller to own and use its assets in the manner in which it currently owns and uses such assets.

3.10 Legal Proceedings; Orders

(a) Except as set forth in Exhibit 3.12, there is no pending or, to Seller's knowledge, threatened Proceeding:

(i) by or against Seller or that otherwise relates to or may affect the business of, or any of the assets owned or used by, Seller; or

(ii) that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, any of the Contemplated Transactions.

To the knowledge of Seller, no event has occurred or circumstance exists that is reasonably likely to give rise to or serve as a basis for the commencement of any such Proceeding. Seller will promptly deliver or provided access to Buyer copies of all pleadings, correspondence and other documents relating to each Proceeding listed in Exhibit 3.12. There are no Proceedings listed or required to be listed in Exhibit 3.12 that could have a Material adverse effect on the business, operations, assets, condition or prospects of Seller or upon the Assets.

(b) Except as set forth in Exhibit 3.12; to the knowledge of Seller, no officer, director, agent or employee of Seller is subject to any Order that prohibits such officer, director, agent or employee from engaging in or continuing any conduct, activity or practice relating to the business of Seller.

(c) Except as set forth in Exhibit 3.12:

(i) To Seller's knowledge, Seller is in Material compliance with all of the terms and requirements of each Order to which it or any of the Assets is or has been subject;

(ii) To Seller's knowledge, no event has occurred or circumstance exists that is reasonably likely to constitute or result in a violation of or failure to comply with any term or requirement of any Order to which Seller or any of the Assets is subject material to the operation of the System or a portion thereof; and

(iii) Seller has not received any notice or other communication (whether oral or written) from any Governmental Body or any other Person regarding any actual, alleged, possible or potential violation of, or failure to comply with, any term or requirement of any Order to which Seller or any of the Assets is or has been subject, that has not already been resolved.

3.10(A) Absence of Certain Changes and Events.

(a) Except as set forth in Exhibit 3.10(A), since July 1, 2002, Seller has conducted its business only in the Ordinary Course of Business, there has not been any material adverse change in its business and in the operation of the System, and there has not been:

(b) There has not been any damage to or destruction or loss of any Asset, whether or not covered by insurance that has not been replaced or which will not be replaced prior to the Effective Time;

(c) There has not been (to the extent the same might be material to the results of operations of the System or a portion thereof) a sale (other than sales of Inventories in the Ordinary Course of Business), lease or other disposition of any Asset or property of Seller (including the Intellectual Property Assets);

3.11 Contracts; No Defaults

(a) To the best of Seller's knowledge, Seller has delivered or made available to Buyer accurate and complete copies of:

(i) each Seller Contract that involves performance of services or delivery of goods or materials by Seller of an amount or value in excess of $10,000;

(ii) each Seller Contract that involves performance of services or delivery of goods or materials to Seller of an amount or value in excess of $10,000;

(iii) each Seller Contract that was not entered into in the Ordinary Course of Business and that involves expenditures or receipts of Seller in excess of $10,000;

(iv) each Seller Contract affecting the ownership of, leasing of, title to, use of or any leasehold or other interest in any real or personal property (except personal property leases and installment and conditional sales agreements having a value per item or aggregate payments of less than $10,000 and with a term of less than one year);

(v) each Seller Contract with any labor union or other employee representative of a group of employees relating to wages, hours and other conditions of employment; each Seller Contract entered into other than in the Ordinary Course of Business that contains or provides for an express undertaking by Seller to be responsible for consequential damages;

(vi) each Seller Contract for capital expenditures in excess of $10,000;

(vii) each Seller Contract not denominated in U.S. dollars;

(viii) each Seller Contract containing covenants that in any way purport to restrict Seller's business activity or limit the freedom of Seller to engage in any line of business or to compete with any Person;

(ix) each power of attorney of Seller that is currently effective and outstanding;

(x) each written warranty, guaranty, and/or similar undertaking withy respect to contractual performance extended by Seller other than in the Ordinary Course of Business; and

(xi) each amendment, supplement and modification (whether oral or written) in respect of any of the foregoing.

(b) Except as set forth in Exhibit 7.3:

(i) each Contract which is to be assigned to or assumed by Buyer under this Agreement is in full force and effect and is valid and enforceable in accordance with its terms;

(ii) each Contract which is being assigned to or assumed by Buyer is assignable by Seller to Buyer without the consent of any other Person;

(c) Except as set forth in Exhibit 3.13 or 3.12:

(i) Seller is in compliance with all applicable terms and requirements of each Seller Contract which is being assumed by Buyer;

(ii) To Seller's knowledge, no event has occurred or circumstance exists that (with or without notice or lapse of time) may contravene, conflict with or result in a Breach of, or give Seller or other Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or payment under, or to cancel, terminate or modify, any Seller Contract that is being assigned to or assumed by Buyer;

(iii) To Seller's knowledge, no event has occurred or circumstance exists under or by virtue of any Contract that (with or without notice or lapse of time) would cause the creation of any Encumbrance affecting any of the Assets; and

(iv) Seller has not given to or received from any other Person any notice or other communication (whether oral or written) regarding any actual, alleged, possible or potential violation or Breach of, or default under, any Contract which is being assigned to or assumed by Buyer.

(d) There are no renegotiations of, attempts to renegotiate or outstanding rights to renegotiate any material amounts paid or payable to Seller under current or completed Contracts with any Person having the contractual or statutory right to demand or require such renegotiation and no such Person has made written demand for such renegotiation.

3.12 Environmental Matters

Except as disclosed in Exhibit 3.12:

(e) Seller is in material compliance with and is not in material violation of or liable under, any Environmental Law. Seller has no basis to expect any actual or threatened order, notice or other communication from (i) any Governmental Body or private citizen acting in the public interest or (ii) the current or prior owner or operator of any Facilities, of any actual or potential violation or failure to Materially comply with any Environmental Law, or of any actual or threatened obligation to undertake or bear the cost of any Environmental, Health and Safety Liabilities with respect to any Facility or other property or asset (whether real, personal or mixed) in which Seller has or had an interest, or with respect to any property or Facility at or to which Hazardous Materials were generated, manufactured, refined, transferred, imported, used or processed by Seller.

(f) There are no pending or, to the knowledge of Seller, threatened claims, Encumbrances, or other restrictions of any Material nature resulting from any Environmental, Health and Safety Liabilities or arising under or pursuant to any

Environmental Law with respect to or affecting any Facility or any other property or asset (whether real, personal or mixed) in which Seller has or had an interest.

(g) Seller has no knowledge of or any basis to expect nor has received, any citation, directive, inquiry, notice, Order, summons, warning or other communication that relates to Hazardous Activity, Hazardous Materials, or any alleged, actual, or potential violation or failure to materially comply with any Environmental Law, or of any alleged, actual, or potential obligation to undertake or bear the cost of any Environmental, Health and Safety Liabilities with respect to any Facility or property or asset (whether real, personal or mixed) in which Seller has or had an interest, or with respect to any property or facility to which Hazardous Materials generated, manufactured, refined, transferred, imported, used or processed by

(h) Seller has no Material Environmental, Health and Safety Liabilities with respect to any Facility or, to the knowledge of Seller, with respect to any other property or asset (whether real, personal or mixed) in which Seller (or any predecessor) has or had an interest or at any property geologically or hydrologically adjoining any Facility or any such other property or asset.

(i) There are no Hazardous Materials present on or in the Environment at any Facility or at any geologically or hydrologically adjoining property, that are not in material compliance with Environmental Laws, including any Hazardous Materials contained in barrels, aboveground or underground storage tanks, landfills, land deposits, dumps, equipment (whether movable or fixed) or other containers, either temporary or permanent, and deposited or located in land, water, sumps, or any other part of the Facility or such adjoining property, or incorporated into any structure therein or thereon. Seller has not permitted or conducted, or is aware of, any Hazardous Activity conducted with respect to any Facility or any other property or assets (whether real, personal or mixed) in which Seller has or had an interest except in full compliance with all applicable Environmental Laws.

(j) There has been no material Release or, to the knowledge of Seller, Threat of Release, of any Hazardous Materials at or from any Facility or at any other location where any Hazardous Materials were generated, manufactured, refined, transferred, produced, imported, used, or processed from or by any Facility, or from any other property or asset (whether real, personal or mixed) in which Seller has or had an interest, or to the knowledge of Seller any geologically or hydrologically adjoining property.

(k) Seller has delivered or made available to Buyer true and complete copies and results of any reports, studies, analyses, tests, or monitoring possessed or initiated by Seller pertaining to Hazardous Materials or Hazardous Activities in, on, or under the Facilities, or concerning compliance, by Seller with Environmental Laws including, but not limited to the environmental assessments listed in Exhibit 3.13

(l) Notwithstanding any provision contained herein to the contrary:

(i) Seller shall not be responsible for any costs associated with contamination which has come to be located on or below the Property solely as the result of subsurface migration in an aquifer from a source or sources outside the Property, provided that (a) the Seller did not cause, contribute to, or exacerbate the release or threat of release of the contaminants through an act or omission; (b) the person that caused the release is not an agent or employee of the Seller, and was not in a direct or indirect contractual relationship with the Seller; and (c) there is no alternative basis for the Seller's liability for the contaminated aquifer, such as liability as a generator or transporter of hazardous substances under Section 107(a)(3) and (4) of the Federal Comprehensive Environmental Response Compensation and Liability Act (CERCLA) or liability as an owner by reason of the existence of a source of contamination on the Seller's property other than the contamination that migrated in an aquifer from a source outside the Property.

(ii) Seller shall not be required to pay for the costs of rehabilitation of environmental contamination resulting from a discharge of petroleum products that is eligible for restoration funding from the Inland Protection Trust Fund pursuant to Chapter 376, Florida Statutes, in advance of commitment of restoration funding in accordance with the sites priority ranking pursuant to Section 376.3071(5)(a), Florida Statutes. In the event that Buyer determines that rehabilitation of petroleum contamination must occur earlier than the priority ranking established by the Florida Department of Environmental Protection, Buyer may request an assignment by Seller of all rights to reimbursement from the Inland Protection Trust Fund for such site and proceed with rehabilitation. Seller shall provide an assignment of all rights to reimbursement within ten (10) days of receipt of a request from a Buyer.

3.13 Employee Benefits

(a) Exhibit 3.16(a) contains and lists the following in connection with the current employees of the Systems: (i) any collective bargaining agreement not otherwise referenced in this Agreement or any employment agreement not terminable on thirty (30) days notice, (ii) each defined benefit plan and defined contribution plan, stock option or ownership plan, executive compensation, bonus, incentive compensation or deferred compensation plan, (iii) vacation pay, medical, dental, disability or death benefit plan, and (iv) any other employee benefit plan, program, arrangement, agreement or policy, including without limitation each "employee benefit plan" within the meaning of Section 3(3) of ERISA, in each case which is maintained or contributed to or by Seller, (collectively the "Employee Plans"). Seller will promptly deliver to Buyer true, accurate and complete copies of the documents comprising each Employee plan (or, with respect to any Employee Plan which is unwritten, a detailed written description of eligibility, participation, benefits, funding arrangements, assets and any other matters which relate to the obligations of Seller.

(b) Except as shown on Exhibit 3.13(b), neither Seller nor any fiduciary of an Employee Plan has engaged in a transaction with respect to any Employee Plan that, assuming the taxable period of such transaction expired as of the date hereof, could subject Seller or Buyer to a Tax or penalty imposed by either Section 4975 of the Code or Section 502(1) of ERISA or a violation of Section 406 of ERISA.

(c) Except as shown on Exhibit 3.13(c), with respect to any Employee Plan or any other such plan maintained by a corporation or trade or business controlled by, controlling or under common control with Seller within the meaning of Section 414 of the Code (collectively the "Controlled Group Plans"):

(i) Full payment has been made of all amounts that are required under the terms of each Controlled Group Plan to be paid as contributions with respect to all periods prior to and including the last day of the most recent fiscal year of such Controlled group Plan ended on or before the date of this Agreement and all periods thereafter prior to the Closing Date, and no accumulated funding deficiency or liquidity shortfall (as those terms are defined in Section 412 of the Code) has been incurred with respect to any such Employee Plan, whether or not waived.

(ii) No Controlled Group Plan, if subject to Title IV of ERISA, has been completely or partially terminated, nor has any event occurred nor does any circumstance exist that could result in the partial termination of any such Controlled Group Plan.

(iii) The form of all Controlled Group Plans is in substantial compliance with the applicable terms of ERISA, the Code, and any other applicable laws, including the Americans with Disabilities Act of 1990, the Family Medical Leave Act of 1993 and the Health Insurance Portability and Accountability Act of 1996, and such plans have been operated in compliance with such laws and the written Controlled Group Plan documents.

(iv) Neither Seller nor any corporation or trade or business controlled by, controlling or under common control with Seller within the meaning of Section 414 of the Code contributes or is obligated to contribute to any multiemployer plan (as defined in Section 3(3 7) of ERISA) or has completely or partially withdrawn from (as defined in ERISA Sections 4203 or 4205) any multiemployer plan under any circumstances which would impose any Liability on Buyer.

(d) Except as shown on Exhibit 3.13(d), Seller has, at all times, complied, and currently complies, in all material respects with the applicable continuation requirements for its welfare plans, including (i) Section 4980B of the Code (as well as its predecessor provision, Section 162(k) of the Code) and Section 601 through 608, inclusive, of ERISA (collectively "COBRA") and (ii) any applicable state statutes mandating health insurance continuation coverage for employees.

(e) Except for the continuation coverage requirements of COBRA, and except as shown on Exhibit 3.13(e) Seller has no obligations or potential liability for benefits to employees, former employees or their respective dependents following termination of employment or retirement under any of the Employee Plans that are welfare benefit plans as defined in Section 3(1) of ERISA

3.14 Intellectual Property Assets

(a) The term "Intellectual Property Assets" means all intellectual property owned or licensed (as licensor or licensee) by Seller in which Seller has a proprietary interest, including:

(iii) Seller's name, all assumed fictional business names, trade names, registered and unregistered trademarks, service marks and applications (collectively, "Marks");

(iv) all patents, patent applications and inventions and discoveries that may be patentable (collectively, "Patents");

(v) all registered and unregistered copyrights in both published works and unpublished works (collectively, "Copyrights");

(vi) all rights in mask works;

(vii) all know-how, trade secrets, confidential or proprietary information, customer lists, Software, technical information, data, process technology, plans, drawings and blue prints (collectively, "Trade Secrets"); and

(viii) all rights in internet web sites and internet domain names presently used by Seller (collectively "Net Names").

(b) Exhibit 3.14 contains a complete and accurate list and summary description and Seller has delivered to Buyer accurate and complete copies of all Intellectual Property Assets, except for any license implied by the sale of a product and perpetual, paid-up licenses for commonly available Software programs with a value of less than $500 under which Seller is the licensee except as otherwise indicted on the foregoing exhibit. Except as set forth in Exhibit 3.14, the Intellectual Property Assets are all those necessary for the operation of Seller's business as it is currently conducted. Seller is the owner or licensee of all right, title and interest in and to each of the Intellectual Property Assets, free and clear of all Encumbrances, and has the right to use and transfer without payment to a Third Party all of the Intellectual Property Assets, other than in respect of licenses listed in Exhibit 3.14. To Seller's knowledge, no Intellectual Property Asset is infringed, or to Seller's knowledge, has been challenged or threatened in any way and does not infringe the intellectual property rights of any Third Party.

3.15 Brokers Or Finders

Neither Seller nor any of its Representatives have incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payments in connection with the sale of Seller's business or the Assets or the Contemplated Transactions.

3.16 Disclosure

(m) No Material representation or warranty made by Seller in this Agreement contains any Material untrue statement or omits to state a Material fact necessary to make any of them, in light of the circumstances in which it was made, not misleading.

3.17 Employees

Exhibit 3.23(a) contains a complete and accurate list of the following information for each employee and director of Seller, including each employee on leave of absence or layoff status: name; job title; date of hiring or engagement; date of commencement of employment or engagement; current compensation paid or payable and any change in compensation since July 1, 2002; sick and vacation leave that is accrued but unused; and service credited for purposes of vesting and eligibility to participate under any Employee Plan; or any other employee or director benefit plan, except as otherwise indicated on said exhibit.

3.18 Labor Disputes; Compliance

(a) Except as shown on Exhibit 3.18, Seller has complied in all material respects with all Legal Requirements relating to employment practices, terms and conditions of employment, equal employment opportunity, nondiscrimination, immigration, wages, hours, benefits, collective bargaining and other requirements under state of federal law, the payment of social security and similar Taxes and occupational safety and health. Seller is not liable for the payment of any Taxes, fines, penalties, or other amounts, however designated, for failure to comply with any of the foregoing Legal Requirements.

(b) Except as shown on Exhibit 3.18, (i) Seller has not been, and is not now, a party to any collective bargaining agreement or other labor contract; (ii) there has not been, there is not presently pending or existing, and to Seller's knowledge there is not threatened, any strike, slowdown, picketing, work stoppage or employee grievance process involving Seller; (iii) to Seller's knowledge no event has occurred or circumstance exists that could provide the basis for any work stoppage or other labor dispute; (iv) there is not pending or, to Seller's knowledge, threatened against or affecting Seller any Proceeding relating to the alleged violation of any Legal Requirement pertaining to labor relations or employment matters, including any charge or complaint

filed with the National Labor Relations Board or any comparable Governmental Body, and there is no organizational activity or other labor dispute against or affecting Seller or the Facilities; (v) no application or petition for an election of or for certification of a collective bargaining agent is pending; (vi) no grievance or arbitration Proceeding exists that might have an adverse effect upon Seller or the conduct of its business; (vii) there is no lockout of any employees by Seller, and no such action is contemplated by Seller; and (viii) to Seller's knowledge there has been no pending charge of discrimination filed against or threatened against Seller with the Equal Employment Opportunity Commission or similar Governmental Body or any pending employment discrimination, wrongful discharge, retaliation lawsuits or lawsuits alleging whistleblowing.

3.19 Capital Program.

The Capital Improvement Plan Requirement, exclusive of the cost of any Remedial Capital Projects and any Remedial Capital Project Amounts, includes sufficient moneys to satisfy all obligations owned by the Seller under developer agreements assumed by the Buyer.

4. Representations and Warranties of Buyer

Buyer represents and warrants to Seller as follows:

4.1 Organization and Good Standing

Buyer is a governmental entity duly organized, validly existing and in good standing under the laws of the State of Florida, with full governmental power and authority to conduct its business as it is now conducted and to complete the transactions contemplated by this Agreement.

4.2 Authority; No Conflict

(a) This Agreement constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms. Upon the execution and delivery by Buyer of the agreements to be executed or delivered by Buyer at Closing (collectively, the "Buyer's Closing Documents"), each of the Buyer's Closing Documents will constitute the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its respective terms. Buyer has the absolute and unrestricted right, power and authority to execute and deliver this Agreement and the Buyer's Closing Documents and to perform its obligations under this Agreement and the Buyer's Closing Documents, and such action has been duly authorized by all necessary corporate action.

(b) Neither the execution and delivery of this Agreement by Buyer nor the consummation or performance of any of the Contemplated Transactions by Buyer will give any Person the right to prevent, delay or otherwise interfere with any of the Contemplated Transactions pursuant to:

(i) any provision of Buyer's Governing Documents;

(ii) any resolution adopted by the board of directors or the shareholders of Buyer;

(iii) any Legal Requirement or Order to which Buyer may be subject; or

(iv) any Contract to which Buyer is a party or by which Buyer may be bound.

Buyer is not and will not be required to obtain any Consent from any Person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the Contemplated Transactions.

4.3 Certain Proceedings

There is no pending Proceeding that has been commenced against Buyer and that challenges, or may have the effect of preventing, delaying, making illegal or otherwise interfering with, any of the Contemplated Transactions. To Buyer's knowledge, no such Proceeding has been threatened.

4.4 Brokers Or Finders

Neither Buyer nor any of its Representatives have incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with the Contemplated Transactions.

5. Covenants of Seller Prior to Closing

5.1 Access and Investigation

Between the date of this Agreement and the Closing Date, and upon reasonable advance notice received from Buyer and subject to any applicable confidentiality obligations, Seller shall (a) afford Buyer and its Representatives and prospective lenders, underwriters, and their Representatives (collectively, "Buyer Group") full and free access, during regular business hours, to Seller's personnel, properties (including subsurface testing), Contracts, Governmental Authorizations, books and Records and other documents and data, such rights of access to be exercised in a manner that does not unreasonably interfere with the operations of Seller; (b) furnish Buyer Group with copies of all such Contracts, Governmental Authorizations, books and Records and other existing documents and data as Buyer may reasonably request; (c) furnish Buyer Group with such additional financial, operating and other relevant data and information as Buyer may reasonably request; and (d) otherwise cooperate and assist, to the extent reasonably requested by Buyer, with Buyer's investigation of the properties, assets and financial condition related to Seller. In addition, Buyer shall have the right to have the Real

Property and Tangible Personal Property inspected by Buyer Group, at Buyer's sole cost and expense, for purposes of determining the physical condition and legal characteristics of the Real Property and Tangible Personal Property. In the event subsurface or other destructive testing is recommended by any of Buyer Group, Buyer shall be permitted to have the same performed with the prior consent of Seller, which shall not be unreasonably withheld.

5.2 Operation of the Business of Seller

Between the date of this Agreement and the Closing, Seller shall:

(a) conduct its business in the Ordinary Course of Business;

(b) except as otherwise directed by Buyer in writing, and without making any commitment on Buyer's behalf, use its Best Efforts to preserve intact its current business organization, keep available the services of its officers, employees and agents and maintain its relations and good will with suppliers, customers, landlords, creditors, employees, agents and others having business relationships with it;

(c) confer with Buyer prior to implementing operational decisions of a Material nature;

(d) otherwise report periodically to Buyer concerning the status of its business, operations and finances;

(e) make no Material changes in senior management personnel identified by Buyer in Section 2.7, without prior consultation with Buyer;

(f) maintain the Assets in a state of repair and condition that complies with Legal Requirements and is consistent with the requirements and normal conduct of Seller's business;

(g) keep in full force and effect, without amendment, all rights relating to Seller's business;

(h) comply with all Legal Requirements and contractual obligations applicable to the operations of Seller's business;

(i) cooperate with Buyer and assist Buyer in identifying the Governmental Authorizations required by Buyer to operate the business from and after the Closing Date and either transferring existing Governmental Authorizations of Seller to Buyer, where permissible, or obtaining new Governmental Authorizations for Buyer;

(j) upon request from time to time, execute and deliver all documents, make all truthful oaths, testify in any Proceedings and do all other acts that may be reasonably

necessary to consummate the Contemplated Transactions, all without further consideration; and

(k) maintain all books and Records of Seller relating to Seller's business in the Ordinary Course of Business.

5.3 Negative Covenant

Except as otherwise expressly permitted herein, between the date of this Agreement and the Closing Date, Seller shall not without the prior written Consent of Buyer which shall not be unreasonably withheld and which shall be promptly acted upon by Buyer, (a) make any modification to any material Contract or Governmental Authorization; or (b) allow the levels of raw materials, supplies or other materials included in the Inventories to vary Materially from the levels customarily maintained.

5.4 Required Approvals

As promptly as practicable after the date of this Agreement, Seller shall make all filings required by Legal Requirements to be made by it in order to consummate the Contemplated Transactions. Seller also shall cooperate with Buyer and its Representatives with respect to all filings that Buyer elects to make or, pursuant to Legal Requirements, shall be required to make in connection with the Contemplated Transactions. Seller also shall cooperate with Buyer and its Representatives in obtaining all Material Consents.

5.5 Notification

Between the date of this Agreement and the Closing, Seller shall promptly notify Buyer in writing if any of them becomes aware of (a) any fact or condition that causes or constitutes a Breach of any of Seller's representations and warranties made as of the date of this Agreement or (b) the occurrence after the date of this Agreement of any fact or condition that would or be reasonably likely to (except as expressly contemplated by this Agreement) cause or constitute a Breach of any such representation or warranty had that representation or warranty been made as of the time of the occurrence of, or Seller's discovery of, such fact or condition. During the same period, Seller also shall promptly notify Buyer of the occurrence of any Breach of any covenant of Seller in this Article 5 or of the occurrence of any event that may make the satisfaction of the conditions in Article 7 impossible or unlikely.

5.6 No Negotiation

Until such time as this Agreement shall be terminated pursuant to Section 9.1, Seller shall not directly or indirectly solicit, initiate, encourage or entertain any inquiries or proposals from, discuss or negotiate with, provide any nonpublic information to or consider the merits of any inquiries or proposals from any Person (other than Buyer)

relating to any business combination transaction involving Seller or the System (other than in the Ordinary Course of Business).

5.7 Best Efforts

Seller shall use their Best Efforts to cause the conditions in the Agreement to be satisfied and on or before the Closing, Seller shall (a) amend its Governing Documents and take all other actions necessary to change its name to one sufficiently dissimilar to Seller's present name, in Buyer's judgment, to avoid confusion and (b) take all actions requested by the Buyer to either assume such name as an assumed name or to change its name to Seller's present name.

5.8 Payment Of Liabilities

Seller shall pay or otherwise satisfy in the Ordinary Course of Business all of its Liabilities and obligations as they come due.

5.9 Current Evidence of Title

(a) As soon as is reasonably possible, and in no event later than thirty (30) Business Days after the date of this Agreement, Seller shall furnish to Buyer, at Seller's expense, for each parcel listed in Exhibit 3.5

(i) from Commonwealth Land Title Insurance Company (the "Title Policy") (the "Title Insurer"):

(1) a title commitment or title commitments issued by the Title Insurer to insure title to each parcel listed in Exhibit 3.5, , in the aggregate amount of that portion of the Purchase Price allocated to the Land , as specified in Part 2.5, covering such Land , naming Buyer as the proposed insured and having an effective date after the date of this Agreement, wherein the Title Insurer shall agree to issue an ALTA form owner's title insurance policy 1992 (ID-17-92) with Florida modifications (collectively the "Title Commitment"); and

(2) copies of all recorded documents listed as Schedule B-1 matters to be terminated or satisfied in order to issue the policy described in the Title Commitment or as special Schedule B-2 exceptions thereunder (the "Recorded Documents").

(b) The Title Commitment shall include the Title Insurer's requirements for issuing its title policy, which requirements shall be met by Seller on or before the Closing Date (including those requirements that must be met by releasing or satisfying monetary

Encumbrances, but excluding Encumbrances that will remain after Closing and those requirements that are to be met solely by Buyer).

(c) If any of the following shall occur (collectively, a "Title Objection"):

(i) The Title Commitment or other evidence of title or search of the appropriate real estate records discloses that any party other than Seller has title to the insured estate covered by the Title Commitment;

(ii) any title exception is disclosed in Schedule B to any Title Commitment that is not one of the Permitted Real Estate Encumbrances or one that Seller specifies when delivering the Title Commitment to Buyer as one that Seller will cause to be deleted from the Title Commitment concurrently with the Closing, including (A) any exceptions that pertain to Encumbrances securing any loans that do not constitute an Assumed Liability and (B) any exceptions that Buyer reasonably believes could materially and adversely affect Buyer's use and enjoyment of the Land described therein; or

(iii) any Survey discloses any matter that Buyer reasonably believes could materially and adversely affect Buyer's use and enjoyment of the Land described therein;

then Buyer shall notify Seller in writing ("Buyer's Notice") of such matters within [ten (10)] business days after receiving all of the Title Commitment, Survey and copies of Recorded Documents for the Facility covered thereby.

(d) Seller shall use its Best Efforts to cure each Title Objection and take all steps required by the Title Insurer to eliminate each Title Objection as an exception to the Title Commitment. Any Title Objection that the Title Company is willing to insure over on terms acceptable to Seller and Buyer is herein referred to as an "Insured Exception." The Insured Exceptions, together with any title exception or matters disclosed by the Survey not objected to by Buyer in the manner aforesaid shall be deemed to be acceptable to Buyer.

(e) Nothing herein waives Buyer's right to claim a breach of Section 3.9(a) or to claim a right to indemnification as provided in Section 11.2 if Buyer suffers Material Damages as a result of a misrepresentation with respect to the condition of title to the Land.

(f) Seller shall use its best efforts to comply with the requirements of Schedule B Section 1 of the Title Commitment. At the Closing, Seller shall identify any Schedule B Section 1 requirements that cannot be satisfied as of the Closing. Seller and Buyer shall agree on a post-Closing process to satisfy these requirements (the "Post-Closing Schedule B Requirements"). Seller shall indemnify as to all Post-Closing Schedule B requirements

that are not satisfied in accordance with the agreed upon post-Closing process shall be identified by Seller in writing to Buyer.

6. Covenants of Buyer Prior to Closing

6.1 Required Approvals

As promptly as practicable after the date of this Agreement, Buyer shall make, or cause to be made, all filings required by Legal Requirements to be made by it to consummate the Contemplated Transactions. Buyer also shall cooperate, and cause its Related Persons to cooperate, with Seller (a) with respect to all filings Seller shall be required by Legal Requirements to make and (b) in obtaining all Consents identified in Exhibit 7.3, provided, however, that Buyer shall not be required to dispose of or make any change to its business, expend any Material funds or incur any other Material burden in order to comply with this Section 6.1.

6.2 Best Efforts

Buyer shall use its Best Efforts to cause the conditions in this Agreement to be satisfied.

7. Conditions Precedent to Buyer's Obligation to Close

Buyer's obligation to purchase the Assets and to take the other actions required to be taken by Buyer at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Buyer, in whole or in part):

7.1 Accuracy of Representations

(a) All of Seller's representations and warranties in this Agreement (considered collectively), and each of these representations and warranties (considered individually), shall have been accurate as of the Exhibit Delivery Date, and shall be accurate in all material respects as of the time of the Closing as if then made.

(b) Each of the representations and warranties in Sections 3.2(a) and 3.4, and each of the representations and warranties in this Agreement that contains an express materiality qualification, shall be accurate in all respects as of the time of the Closing as if then made.

7.2 Seller's Performance

All of the covenants and obligations that Seller are required to perform or to comply with pursuant to this Agreement at or prior to the Closing (considered

collectively), and each of these covenants and obligations (considered individually), shall have been duly performed and complied with in all Material respects.

7.3 Consents

Each of the Material Consents to be identified by Buyer and agreed to by Seller in Exhibit 7.3 prior to Closing (the "Material Consents") shall have been obtained and shall be in full force and effect which Exhibit shall be attached hereto on or before the time the Due Diligence set forth in Section 13.15 is completed.

7.4 Additional Documents

Seller shall have caused the documents and instruments required by Section 2.7(a) and the following documents to be delivered (or made available) to Buyer:

(a) The articles of incorporation and all amendments thereto of Seller, duly certified as of a recent date by the Secretary of State;

(b) A legal opinion reasonably satisfactory to Buyer; and

(c) Such other documents as Buyer may reasonably request for the purpose of:

(i) evidencing the accuracy of any of Seller's representations and warranties;

(ii) evidencing the performance by Seller of, or the compliance by Seller with, any covenant or obligation required to be performed or complied with by Seller;

(iii) evidencing the satisfaction of any condition referred to in this Article 7;

(iv) otherwise facilitating the consummation or performance of any of the Contemplated Transactions; or

(v) evidence showing the release of all liens, security interests, and other encumbrances other than Permitted Encumbrances (but excluding any Permitted Encumbrances that encumber the Assets held by any entity which has provided or may provide financing to the Seller)

7.5 No Conflict

Neither the consummation nor the performance of any of the Contemplated Transactions will, directly or indirectly, Materially contravene or conflict with or result in a Material violation of or cause Buyer or any Related Person of Buyer to suffer any Material adverse consequence under (a) any applicable Legal Requirement or Order or

(b) any valid Legal Requirement or Order that has been entered by any Governmental Body.

8. Conditions Precedent to Seller's Obligation to Close

Seller's obligation to sell the Assets and to take the other actions required to be taken by Seller at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Seller in whole or in part):

8.1 Accuracy of Representations

All of Buyer's representations and warranties in this Agreement (considered collectively), and each of these representations and warranties (considered individually), shall have been accurate in all Material respects as of the date of this Agreement and shall be accurate in all Material respects as of the time of the Closing as if then made.

8.2 Buyer's Performance

All of the covenants and obligations that Buyer is required to perform or to comply with pursuant to this Agreement at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), shall have been performed and complied with in all Material respects.

8.3 Additional Documents

Buyer shall have caused a legal opinion satisfactory to Seller to be supplied and the documents and instruments required by Section 2.7(b) and the following documents to be delivered or made available to Seller:

(a) such other documents as Seller may reasonably request for the purpose of:

(i) evidencing the accuracy of any representation or warranty of Buyer,

(ii) evidencing the performance by Buyer of, or the compliance by Buyer with, any covenant or obligation required to be performed or complied with by Buyer or

(iii) evidencing the satisfaction of any condition referred to in this Article

8.4 No Injunction

There shall not be in effect any Legal Requirement or any injunction or other Order that (a) prohibits the consummation of the Contemplated Transactions and (b) has

been adopted or issued, or has otherwise become effective, since the date of this Agreement.

9. Termination

9.1 Termination Events

By notice given prior to or at the Closing, subject to Section 9.2, this Agreement may be terminated as follows:

(a) by Buyer if a material Breach of any provision of this Agreement has been committed by Seller and such Breach has not been waived by Buyer;

(b) by Seller if a material Breach of any provision of this Agreement has been committed by Buyer and such Breach has not been waived by Seller;

(c) by Buyer if any condition in Article 7 has not been satisfied as of the date specified for Closing in the first sentence of Section 2.6 or if satisfaction of such a condition by such date is or becomes impossible (other than through the failure of Buyer to comply with its obligations under this Agreement), and Buyer has not waived such condition on or before such date;

(d) by Seller if any condition in Article 8 has not been satisfied as of the date specified for Closing in the first sentence of Section 2.6 or if satisfaction of such a condition by such date is or becomes impossible (other than through the failure of Seller to comply with its obligations under this Agreement), and Seller has not waived such condition on or before such date;

(e) by mutual consent of Buyer and Seller;

(f) by Buyer if the Closing has not occurred on or before December 15, 2002 or such later date as the parties may agree upon, unless the Buyer is in material Breach of this Agreement; or

(g) by Seller if the Closing has not occurred on or before December 15, 2002 or such later date as the parties may agree upon, unless the Seller is in material Breach of this Agreement.

9.2 Effect Of Termination

Each party's right of termination under Section 9.1 is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of such right of termination will not be an election of remedies. If this Agreement is terminated pursuant to Section 9.1, all obligations of the parties under this Agreement will terminate, except that the obligations of the parties in this Section 9.2 and Articles 12 and 13 (except for

those in Section 13.5) will survive, provided, however, that, if this Agreement is terminated because of a Breach of this Agreement by the non-terminating party or because one or more of the conditions to the terminating party's obligations under this Agreement is not satisfied as a result of the party's failure to comply with its obligations under this Agreement, the terminating party's right to pursue all legal remedies will survive such termination unimpaired. Furthermore, notwithstanding any such termination, the Seller shall immediately upon termination pay to the Buyer the Due Diligence Amount.

Neither Buyer nor Seller shall be liable to the other in the event that after the execution of this Agreement there occurs (i) a change of law that prevents the Closing, (ii) any action by a third party that prevents the Closing or (iii) any order by a Governmental Agency or court that prevents the Closing. Both parties agree to diligently defend against a third party attempt to prevent a Closing.

10. Additional Covenants

10.1 Employees and Employee Benefits

(a) Information on Active Employees. For the purpose of this Agreement, the term "Active Employees" shall mean all employees employed on the Closing Date by Seller for its business who are employed exclusively in Seller's business as currently conducted, including employees on temporary leave of absence, including family medical leave, military leave, temporary disability or sick leave, but excluding employees on long-term disability leave.

(b) Employment of Active Employees by Buyer.

(i) Buyer will make offers of employment to all employees who meet the standards set forth on Exhibit 10.1(b) which Buyer will supply to Seller which is accepted by Seller in the exercise of its reasonable judgment and Buyer may interview all Active Employees. Buyer will provide Seller with a list of Active Employees to whom Buyer has made an offer of employment that has been accepted to be effective on the Closing Date (the "Hired Active Employees"). Subject to Legal Requirements, Buyer will have reasonable access to the Facilities and personnel Records (including performance appraisals, disciplinary actions, grievances and medical Records) of Seller for the purpose of preparing for and conducting employment interviews with all Active Employees and will conduct the interviews as expeditiously as possible prior to the Closing Date. Access will be provided by Seller upon reasonable prior notice during normal business hours. Effective immediately before the Closing, Seller will terminate the employment of all Hired Active Employees.

(ii) Neither Seller nor its Related Persons shall solicit the continued employment of any Active Employee (unless and until Buyer has informed Seller

in writing that the particular Active Employee will not receive any employment offer from Buyer) or the employment of any Hired Active Employee after the Closing. Buyer shall inform Seller promptly of the identities of those Active Employees to whom it will not make employment offers, and Seller shall assist Buyer in complying with the WARN Act as to those Active Employees.

(iii) It is understood and agreed that (A) Buyer's expressed intention to extend offers of employment as set forth in this section shall not constitute any commitment, Contract or understanding (expressed or implied) of any obligation on the part of Buyer to a post-Closing employment relationship of any fixed term or duration or upon any terms or conditions other than those that Buyer may establish pursuant to individual offers of employment, and (B) employment offered by Buyer is "at will" and may be terminated by Buyer or by an employee at any time for any reason (subject to any written commitments to the contrary made by Buyer or an employee and Legal Requirements). Nothing in this Agreement shall be deemed to prevent or restrict in any way the right of Buyer to terminate, reassign, promote or demote any of the Hired Active Employees after the Closing or to change adversely or favorably the title, powers, duties, responsibilities, functions, locations, salaries, other compensation or terms or conditions of employment of such employees.

(c) Salaries and Benefits.

(i) Seller shall be responsible for (A) the payment of all wages and other remuneration due to Active Employees with respect to their services as employees of Seller through the close of business on the Closing Date, including pro rata bonus payments and all vacation pay earned prior to the Closing Date; (B) the payment of any termination or severance payments and the provision of health plan continuation coverage in accordance with the requirements of COBRA and Sections 601 through 608 of ERISA; and (C) any and all payments to employees required under the WARN Act.

(ii) Seller shall be liable for any claims made or incurred by Active Employees and their beneficiaries through the Closing Date under the Employee Plans. For purposes of the immediately preceding sentence, a claim will be deemed incurred, in the case of hospital, medical or dental benefits, when the services that are the subject of the charge are performed and, in the case of other benefits (such as disability or life insurance), when an event has occurred or when a condition has been diagnosed that entitles the employee to the benefit.

(d) No Transfer of Assets. Neither Seller nor its Related Persons will any transfer of pension or other employee benefit plan assets to Buyer.

(e) Terms of Employment. Buyer will set its own initial terms and conditions of employment for the Hired Active Employees and others it may hire, including work

rules, benefits and salary and wage structure, all as permitted by law, provide such terms and conditions shall be in the aggregate substantially similar in value to the terms and conditions of such Hired Active Employees under the Seller's employ as disclosed to Buyer herein. Buyer is not obligated to assume any collective bargaining agreements under this Agreement. Seller shall be solely liable for any severance payment required to be made to its employees due to the Contemplated Transactions. Any bargaining obligations of Buyer with any union with respect to bargaining unit employees subsequent to the Closing, whether such obligations arise before or after the Closing, shall be the sole responsibility of Buyer.

(f) General Employee Provisions.

(i) Seller and Buyer shall give any notices required by Legal Requirements and take whatever other actions with respect to the plans, programs and policies described in this Section 10.1 as may be necessary to carry out the arrangements described in this Section 10.1.

(ii) Seller and Buyer shall provide each other with such plan documents and summary plan descriptions, employee data or other information as may be reasonably required to carry out the arrangements described in this Section 10.1.

(iii) If any of the arrangements described in this Section 10.1 are determined by the IRS or other Governmental Body to be prohibited by law, Seller and Buyer shall modify such arrangements to as closely as possible reflect their expressed intent and retain the allocation of economic benefits and burdens to the parties contemplated herein in a manner that is not prohibited by law.

(iv) Seller shall provide Buyer with completed 1-9 forms and attachments with respect to all Hired Active Employees, except for such employees as Seller certifies in writing to Buyer are exempt from such requirement.

(v) Buyer shall not have any responsibility, liability or obligation, whether to Active Employees, former employees, their beneficiaries or to any other Person, with respect to any employee benefit plans, practices, programs or arrangements (including the establishment, operation or termination thereof and the notification and provision of COBRA coverage extension) maintained by Seller.

(vi) Seller will require certain assistance from certain Hired Active Employees to process post-Closing obligations of Seller, including, but not limited to, filings with the Florida Public Service Commission and other regulatory agencies and federal wage and tax filings (collectively the "Post-Closing Obligations"), and Buyer agrees to provide the services of such necessary employees to assist Seller with its Post-Closing Obligations. Such assistance shall not unreasonably interfere with the necessary employees' regular duties for Buyer.

As consideration to Buyer for assistance with Seller's Post-Closing Obligations, Seller shall pay Buyer the sum of Fifty Thousand Dollars ($50,000.00), which sum shall be credited to Buyer at the Closing.

10.2 Payment of all Taxes Resulting From Sale of Assets by Seller

Seller shall pay in a timely manner all Taxes resulting from or payable in connection with the sale of the Assets pursuant to this Agreement, regardless of the Person on whom such Taxes are imposed by Legal Requirements.

10.3 Payment of Other Retained Liabilities

In addition to payment of Taxes pursuant to Section 10.2, Seller shall pay, or make adequate provision for the payment, in full all of the Retained Liabilities and other Liabilities of Seller under this Agreement. If any such Liabilities are not so paid or provided for, or if Buyer reasonably determines that failure to make any payments will impair Buyer's use or enjoyment of the Assets or conduct of the business previously conducted by Seller with the Assets, Buyer may, upon ten (10) days notice, at any time after the Closing Date, elect to make all such payments directly (but shall have no obligation to do so) and set off and deduct the full amount of all such payments from the first maturing installments of the unpaid principal balance of the Note pursuant to Section 11.8. Buyer shall receive full credit under the Note and this Agreement for all payments so made.

10.4 Removing Excluded Assets

Within sixty (60) days after the Closing Date, Seller shall remove all Excluded Assets (other than the Capital Charges provided for in Section 2.2 hereof) from all Facilities and other Land to be occupied by Buyer. Such removal shall be done in such manner as to avoid any damage to the Facilities and other properties to be occupied by Buyer and any disruption of the business operations to be conducted by Buyer after the Closing. Any damage to the Assets or to the Facilities resulting from such removal shall be paid by Seller. Should Seller fail to remove the Excluded Assets as required by this Section, Buyer shall have the right, but not the obligation, (a) to remove the Excluded Assets at Seller's sole cost and expense; (b) to store the Excluded Assets and to charge Seller all storage costs associated therewith; (c) to treat the Excluded Assets as unclaimed and to proceed to dispose of the same under the laws governing unclaimed property; or (d) to exercise any other right or remedy conferred by this Agreement or otherwise available at law or in equity. Seller shall promptly reimburse Buyer for all costs and expenses incurred by Buyer in connection with any Excluded Assets not removed by Seller on or before the Closing Date.

10.5 Reports and Returns

Seller shall promptly after the Closing prepare and file all reports and returns required by Legal Requirements relating to the business of Seller as conducted using the Assets, to and including the Effective Time.

10.6 Assistance in Proceedings

Seller will cooperate with Buyer and its counsel in the contest or defense of, and make available its personnel and provide any testimony and access to its books and Records in connection with, any Proceeding involving or relating to (a) any Contemplated Transaction or (b) any action, activity, circumstance, condition, conduct, event, fact, failure to act, incident, occurrence, plan, practice, situation, status or transaction on or before the Closing Date involving Seller or its business or either Shareholder.

10.7 Retention of and Access to Records

After the Closing Date, Buyer shall retain for a period consistent with Buyer's record-retention policies and practices those Records of Seller delivered to Buyer. Buyer also shall provide Seller and their Representatives reasonable access thereto, during normal business hours to enable them to prepare financial statements or tax returns or deal with tax audits. After the Closing Date, Seller shall provide Buyer and its Representatives reasonable access to Records that are Excluded Assets, during normal business hours for any reasonable business purpose specified by Buyer in such notice.

10.8 Further Assurances

Subject to the proviso in Section 6.1, the parties shall cooperate reasonably with each other and with their respective Representatives in connection with any steps required to be taken as part of their respective obligations under this Agreement, and shall (a) furnish upon request to each other such further information; (b) execute and deliver to each other such other documents; and (c) do such other acts and things, all as the other party may reasonably request for the purpose of carrying out the intent of this Agreement and the Contemplated Transactions.

11. Indemnification; Remedies

11.1 Survival

All representations, warranties, covenants and obligations in this Agreement, the certificates delivered pursuant to Section 2.7 and any other certificate or document delivered pursuant to this Agreement shall survive the Closing and the consummation of the Contemplated Transactions, subject to Section 11.7. The right to indemnification, reimbursement or other remedy based upon such representations,

warranties, covenants and obligations shall not be affected by any investigation (including any environmental investigation or assessment) conducted with respect to, or any Knowledge acquired at any time, whether before or after the execution and delivery of this Agreement or the Closing Date, with respect to the accuracy or inaccuracy of or compliance with any such representation, warranty, covenant or obligation. The waiver of any condition based upon the accuracy of any representation or warranty, or on the performance of or compliance with any covenant or obligation, will not affect the right to indemnification, reimbursement or other remedy based upon such representations, warranties, covenants and obligations. For purposes of this Article 11, whenever the phrases "to Seller's knowledge", "to the best of Seller's knowledge", "to the knowledge of Seller", or any similar phrase, or whenever the words "material", "materially" are used in this Agreement (other than in this Article 11), such words and phrases shall be disregarded for purposes of this Article 11 and indemnification hereunder as if such words or phrases were stricken from this Agreement.

11.2 Indemnification and Reimbursement by Seller

Seller will indemnify and hold harmless Buyer, and its Representatives, shareholders, subsidiaries and Related Persons (collectively, the "Buyer Indemnified Persons"), and will reimburse the Buyer Indemnified Persons for any loss, liability, claim, damage, expense (including costs of investigation and defense and reasonable attorneys' fees and expenses) or diminution of value, whether or not involving a Third-Party Claim (collectively, "Damages") (but not including any Damages covered by the offsets for the Remedial Capital Project Amount), arising from or in connection with:

(a) any Breach of any representation or warranty made by Seller in (i) this Agreement (without giving effect to any supplement thereto), (ii) the certificates delivered pursuant to Section 2.7 (for this purpose, each such certificate will be deemed to have stated that Seller's representations and warranties in this Agreement fulfill the requirements of Section 7.1 as of the Closing Date as if made on the Closing Date without giving effect to any supplement thereto, unless the certificate expressly states that the matters disclosed in a supplement have caused a condition specified in Section 7.1 not to be satisfied), (v) any transfer instrument or (vi) any other certificate, document, writing or instrument delivered by Seller pursuant to this Agreement;

(b) any Breach of any covenant or obligation of Seller in this Agreement or in any other certificate, document, writing or instrument delivered by Seller pursuant to this Agreement;

(c) any Liability arising out of the ownership or operation of the Assets prior to the Effective Time other than the Assumed Liabilities;

(d) any brokerage or finder's fees or commissions or similar payments

based upon any agreement or understanding made, or alleged to have been made, by any Person with Seller (or any Person acting on its behalf) in connection with any of the Contemplated Transactions;

(e) any liability under the WARN Act or any similar state or local Legal Requirement that may result from an "Employment Loss", as defined by 29 U.S.C. sect. 2101(a)(6), caused by any action of Seller prior to the Closing or by Buyer's decision not to hire previous employees of Seller;

(f) any Employee Plan established or maintained by Seller; or

(g) any Retained Liabilities.

Notwithstanding anything contained in this Agreement to the contrary, the Buyer will not have the right to sue the Seller for Damages which result form a defect in the title to the Real Property obtained by the Buyer pursuant to this Agreement for which there is applicable title insurance pursuant to Section 5.9 hereof and on which a claim may be made by the Buyer for the relevant Damages unless (a) the Buyer has filed a claim under the relevant title insurance policy and the claim has not been allowed within 90 days of the date the claim was filed or (b) the Buyer has filed a claim under the relevant title insurance policy, the claim was allowed within 90 days after the filing of the claim but the processing or defending (or the taking of other relevant action in accordance with the claim by the Title Insurer) is not proceeding in a satisfactory manner as determined by the Buyer in the exercise of its reasonable judgment.

11.3 Indemnification and Reimbursement by Seller--Environmental Matters

In addition to the other indemnification provisions in this Article 11, Seller will indemnify and hold harmless Buyer and the other Buyer indemnified Persons, and will reimburse Buyer and the other Buyer Indemnified Persons, for any Damages (including costs of cleanup, containment or other remediation) arising from or in connection with:

(a) any Environmental, Health and Safety Liabilities arising out of or relating to: (i) the ownership or operation by any Person at any time on or prior to the Closing Date of any of the Facilities, assets or the business of Seller, or (ii) any Hazardous Materials or other contaminants that were present on the Facilities or Assets at any time on or prior to the Closing Date; or

(b) any bodily injury (including illness, disability and death, regardless of when any such bodily injury occurred, was incurred or manifested itself), personal injury, property damage (including trespass, nuisance, wrongful eviction and deprivation of the use of real property) or other damage of or to any Person or any Assets in any way arising from or allegedly arising from any Hazardous Activity conducted by any Person

with respect to the business of Seller or the Assets prior to the Closing Date or from any Hazardous Material that was (i) present on or before the Closing Date on or at the Facilities (or present on any other property, if such Hazardous Material emanated or allegedly emanated from any Facility and was present on any Facility, on or prior to the Closing Date) or (ii) Released or allegedly Released by any Person on or at any Facilities or Assets at any time on or prior to the Closing Date.

Buyer, with Seller's consent and approval which shall not be unreasonably withheld will be entitled to control any Remedial Action, any Proceeding relating to an Environmental Claim and, except as provided in the following sentence, any other Proceeding with respect to which indemnity may be sought under this Section 11.3. The procedure described in Section 11.9 will apply to any claim solely for monetary damages relating to a matter covered by this Section 11.3.

No claim for environmental indemnification or reimbursement may be asserted unless the underlying environmental condition is (i) specifically identified in Exhibit 3.13 or (ii) the party asserting the claim establishes that the conditions, release, disposal or actions giving rise to the liability or claim were present at or prior to Closing and that the party asserting the claim did not materially cause or contribute to such conditions after Closing.

11.4 Indemnification and Reimbursement by Buyer

Buyer will indemnify and hold harmless Seller, and will reimburse Seller, for any Damages arising from or in connection with:

(a) any Breach of any representation or warranty made by Buyer in this Agreement or in any certificate, document, writing or instrument delivered by Buyer pursuant to this Agreement;

(b) any Breach of any covenant or obligation of Buyer in this Agreement or in any other certificate, document, writing or instrument delivered by Buyer pursuant to this Agreement;

(c) any claim by any Person for brokerage or finder's fees or commissions or similar payments based upon any agreement or understanding alleged to have been made by such Person with Buyer (or any Person acting on Buyer's behalf) in connection with any of the Contemplated Transactions; or

(d) any Assumed Liabilities.

11.5 Limitations on Amount--Seller

Seller shall have no liability (for indemnification or otherwise) with respect to claims under Section 11.2(a) until the total of all Damages with respect to such matters exceeds $500,000 and then only for the amount by which such Damages exceed $500,000. However, this Section 11.5 will not apply to claims under (the following, each an "Exempted Breach") Section 11.2(b) through (h) or to matters arising in respect of Sections 3.7, 3.13, or 3.15 to any Breach of any of Seller's representations and warranties of which the Seller had Knowledge at any time prior to the date on which such representation and warranty is made or any Breach by Seller of any covenant or obligation. Notwithstanding the foregoing, the Seller shall not be liable for Minor Claims (as hereinafter defined) until such Minor Claims aggregate more than $500,000 in which case, Seller shall be liable for all Minor Claims to the extent that in the aggregate they exceed $500,000 provided that Damages in aggregate exceed $500,000. "Minor Claim" means Damages resulting from a Breach hereof covered by Section 11.2(a) (other than an Exempted Breach) that do not exceed $20,000.00.

11.6 Limitations on Amount--Buyer

Buyer will have no liability (for indemnification or otherwise) with respect to claims under Section 11.4(a) until the total of all Damages with respect to such matters exceeds $500,000 and then only for the amount by which such Damages exceed $500,000. However, this Section 11.6 will not apply to claims under Section 11.4(b) through (e) or matters arising in respect of Section 4.4 or to any Breach of any of Buyer's representations and warranties of which Buyer had Knowledge at any time prior to the date on which such representation and warranty is made or any Breach by Buyer of any covenant or obligation, and Buyer will be liable for all Damages with respect to such Breaches.

11.7 Time Limitations

(a) If the Closing occurs, Seller will have liability (for indemnification or otherwise) with respect to any Breach of (i) a covenant or obligation to be performed or complied with prior to the Closing Date (other than those in Sections 2.1 and 2.4(b) and Articles 10 and 12, as to which a claim may be made at any time, or (ii) a representation or warranty (other than one contained in Section 3.12 or 3.13 hereof) only if on or before three years after the Closing Date, Buyer notifies Seller of a claim specifying the factual basis of the claim in reasonable detail to the extent then known by Buyer. If the Closing occurs, Seller will have liability (for indemnification or otherwise) with respect to any Breach of the representations and warranties contained in Section 3.12 or 3.13 hereof only if on or before five years after the Closing Date, the Buyer notifies Seller of a claim specifying the factual basis of the claim in reasonable detail to the extent then known by Buyer.

(b) If the Closing occurs, Buyer will have liability (for indemnification or otherwise) with respect to any Breach of (i) a covenant or obligation to be performed or complied with prior to the Closing Date (other than those in Article 12, as to which a claim may be made at any time) or (ii) a representation or warranty (other than that set forth in Section 4.4, as to which a claim may be made at any time), only if on or before three years after the Closing Date, Seller notifies Buyer of a claim specifying the factual basis of the claim in reasonable detail to the extent then known by Seller.

11.8 Right Of Setoff

Upon notice to Seller specifying in reasonable detail the basis therefor, Buyer may set off any amount to which it may be entitled under this Article 11 against amounts otherwise payable to Seller, subject to Seller's right to object under the Dispute Resolution Process. The exercise of such right of setoff by Buyer in good faith, whether or not ultimately determined to be justified, will not constitute an event of default. Neither the exercise of nor the failure to exercise such right of setoff or to give a notice of a claim under the Escrow Agreement will constitute an election of remedies or limit Buyer in any manner in the enforcement of any other remedies that may be available to it.

11.9 Third-Party Claims

(a) Promptly after receipt by a Person entitled to indemnity under Section 11.2, 11.3 (to the extent provided in the last sentence of Section 11.3) or 11.4 (an "Indemnified Person") of notice of the assertion of a Third-Party Claim against it, such Indemnified Person shall give notice to the Person obligated to indemnify under such Section (an "Indemnifying Person") of the assertion of such Third-Party Claim, provided that the failure to notify the Indemnifying Person will not relieve the Indemnifying Person of any liability that it may have to any Indemnified Person, except to the extent that the Indemnifying Person demonstrates that the defense of such Third-Party Claim is prejudiced by the Indemnified Person's failure to give such notice.

(b) If an Indemnified Person gives notice to the Indemnifying Person pursuant to Section 11.9(a) of the assertion of a Third-Party Claim, the Indemnifying Person shall be entitled to participate in the defense of such Third-Party Claim and, to the extent that it wishes (unless (i) the Indemnifying Person is also a Person against whom the Third-Party Claim is made and the Indemnified Person determines in good faith that joint representation would be inappropriate or (ii) the Indemnifying Person fails to provide reasonable assurance to the Indemnified Person of its financial capacity to defend such Third-Party Claim and provide indemnification with respect to such Third-Party Claim), to assume the defense of such Third-Party Claim with counsel satisfactory to the Indemnified Person. After notice from the Indemnifying Person to the Indemnified Person of its election to assume the defense of such Third-Party Claim, the Indemnifying Person shall not, so long as it diligently conducts such defense, be liable to the

Indemnified Person under this Article 11 for any fees of other counsel or any other expenses with respect to the defense of such Third-Party Claim, in each case subsequently incurred by the Indemnified Person in connection with the defense of such Third-Party Claim, other than reasonable costs of investigation. If the Indemnifying Person assumes the defense of a Third-Party Claim, (i) such assumption will conclusively establish for purposes of this Agreement that the claims made in that Third-Party Claim are within the scope of and subject to indemnification, and (ii) no compromise or settlement of such Third-Party Claims may be effected by the Indemnifying Person without the Indemnified Person's Consent unless (A) there is no finding or admission of any violation of Legal Requirement or any violation of the rights of any Person; (B) the sole relief provided is monetary damages that are paid in full by the Indemnifying Person; and (C) the Indemnified Person shall have no liability with respect to any compromise or settlement of such Third-Party Claims effected without its Consent. If notice is given to an Indemnifying Person of the assertion of any Third-Party Claim and the Indemnifying Person does not, within ten (10) days after the Indemnified Person's notice is given, give notice to the Indemnified Person of its election to assume the defense of such Third-Party Claim, the Indemnifying Person will be bound by any determination made in such Third-Party Claim or any compromise or settlement effected by the Indemnified Person.

(c) Notwithstanding the foregoing, if an Indemnified Person determines in good faith that there is a reasonable probability that a Third-Party Claim may adversely affect it or its Related Persons other than as a result of monetary damages for which it would be entitled to indemnification under this Agreement, the Indemnified Person may, by notice to the Indemnifying Person, assume the exclusive right to defend, compromise or settle such Third-Party Claim, but the Indemnifying Person will not be bound by any determination of any Third-Party Claim so defended for the purposes of this Agreement or any compromise or settlement effected without its Consent (which may not be unreasonably withheld).

(d) Notwithstanding the provisions of Section 13.4, Seller and each Shareholder hereby consent to the nonexclusive jurisdiction of any court in which a Proceeding in respect of a Third-Party Claim is brought against any Buyer Indemnified Person for purposes of any claim that a Buyer Indemnified Person may have under this Agreement with respect to such Proceeding or the matters alleged therein and agree that process may be served on Seller and Shareholders with respect to such a claim anywhere in the world.

(e) With respect to any Third-Party Claim subject to indemnification under this Article 11: (i) both the Indemnified Person and the Indemnifying Person, as the case may be, shall keep the other Person fully informed of the status of such Third-Party Claim and any related Proceedings at all stages thereof where such Person is not represented by its own counsel, and (ii) the parties agree (each at its own expense) to render to each other such assistance as they may reasonably require of each other and to

cooperate in good faith with each other in order to ensure the proper and adequate defense of any Third-Party Claim.

(f) With respect to any Third-Party Claim subject to indemnification under this Article 11, the parties agree to cooperate in such a manner as to preserve in full (to the extent possible) the confidentiality of all Confidential Information and the attorney-client and work-product privileges. In connection therewith, each party agrees that: (i) it will use its Best Efforts, in respect of any Third-Party Claim in which it has assumed or participated in the defense, to avoid production of Confidential Information (consistent with applicable law and rules of procedure), and (ii) all communications between any party hereto and counsel responsible for or participating in the defense of any Third-Party Claim shall, to the extent possible, be made so as to preserve any applicable attorney-client or work-product privilege.

11.10 Other Claims

A claim for indemnification for any matter not involving a Third-Party Claim may be asserted by notice to the party from whom indemnification is sought and shall be paid promptly after such notice, subject to filing an objection under the Dispute Resolution Process.

11.11 Buyer Benefit

Upon any termination of this Agreement that would entitle the Buyer to recover the benefit of its bargain with the Seller, the Buyer and Seller agree that the value of the benefit of the bargain is speculative, is not readily subject to determination objectively and agree that the value of the benefit of the bargain to the Buyer is $5 Million, plus an amount equal to all transaction costs which the Buyer would have paid if the Closing and issuance of the Acquisition Bonds had taken place.

12. Confidentiality

12.1 Definition of Confidential Information

(a) As used in this Article 12, the term "Confidential Information" includes any and all of the following information of Seller or Buyer that has been or may hereafter be disclosed in any form, whether in writing, orally, electronically or otherwise, or otherwise made available by observation, inspection or otherwise by either party (Buyer on the one hand or Seller, on the other hand) or its Representatives (collectively, a "Disclosing Party") to the other party or its Representatives (collectively, a "Receiving Party"):

(i) all information that is a trade secret under applicable trade secret or other law;

(ii) all information concerning product specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, past, current and planned research and development, current and planned manufacturing or distribution methods and processes, customer lists, current and anticipated customer requirements, price lists, market studies, business plans, computer hardware, Software and computer software and database technologies, systems, structures and architectures;

(iii) all information concerning the business and affairs of the Disclosing Party (which includes historical and current financial statements, financial projections and budgets, tax returns and accountants' materials, historical, current and projected sales, capital spending budgets and plans, business plans, strategic plans, marketing and advertising plans, publications, client and customer lists and files, contracts, the names and backgrounds of key personnel and personnel training techniques and materials, however documented), and all information obtained from review of the Disclosing Party's documents or property or discussions with the Disclosing Party regardless of the form of the communication; and

(iv) all notes, analyses, compilations, studies, summaries and other material prepared by the Receiving Party to the extent containing or based, in whole or in part, upon any information included in the foregoing.

(b) Any trade secrets of a Disclosing Party shall also be entitled to all of the protections and benefits under applicable trade secret law and any other applicable law. If any information that a Disclosing Party deems to be a trade secret is found by a court of competent jurisdiction not to be a trade secret for purposes of this Article 12, such information shall still be considered Confidential Information of that Disclosing Party for purposes of this Article 12 to the extent included within the definition. In the case of trade secrets, each of Buyer and Seller hereby waives any requirement that the other party submit proof of the economic value of any trade secret or post a bond or other security.

12.2 Restricted Use of Confidential Information

(a) Each Receiving Party acknowledges the confidential and proprietary nature of the Confidential Information of the Disclosing Party and agrees that such Confidential Information (i) shall be kept confidential by the Receiving Party; (ii) shall not be used for any reason or purpose other than to evaluate and consummate the Contemplated Transactions; and (iii) without limiting the foregoing, shall not be disclosed by the Receiving Party to any Person, except in each case as otherwise expressly permitted by the terms of this Agreement or with the prior written consent of an authorized representative of Seller with respect to Confidential Information of Seller (each, a "Seller Contact") or an authorized representative of Buyer with respect to Confidential Information of Buyer (each, a "Buyer Contact"). Each of Buyer and Seller

shall disclose the Confidential Information of the other party only to its Representatives who require such material for the purpose of evaluating the Contemplated Transactions and are informed by Buyer or Seller as the case may be, of the obligations of this Article 12 with respect to such information. Each of Buyer and Seller shall (iv) enforce the terms of this Article 12 as to its respective Representatives; (v) take such action to the extent necessary to cause its Representatives to comply with the terms and conditions of this Article 12; and (vi) be responsible and liable for any breach of the provisions of this Article 12 by it or its Representatives.

(b) Unless and until this Agreement is terminated, Seller shall maintain as confidential any Confidential Information (including for this purpose any information of Seller of the type referred to in Sections 12.1(a)(i), (ii) and (iii), whether or not disclosed to Buyer) of the Seller relating to any of the Assets or the Assumed Liabilities. Notwithstanding the preceding sentence, Seller may use any Confidential Information of Seller before the Closing in the Ordinary Course of Business in connection with the transactions permitted by Section 5.2.

(c) From and after the Closing, the provisions of Section 12.2(a) above shall not apply to or restrict in any manner Buyer's use of any Confidential Information of the Seller relating to any of the Assets or the Assumed Liabilities.

12.3 Exceptions

Sections 12.2(a) and (b) do not apply to that part of the Confidential Information of a Disclosing Party that a Receiving Party demonstrates (a) was, is or becomes generally available to the public other than as a result of a breach of this Article 12 or the Confidentiality Agreement by the Receiving Party or its Representatives; (b) was or is developed by the Receiving Party independently of and without reference to any Confidential Information of the Disclosing Party; or (c) was, is or becomes available to the Receiving Party on a nonconfidential basis from a Third Party not bound by a confidentiality agreement or any legal, fiduciary or other obligation restricting disclosure. Seller shall not disclose any Confidential Information of Seller relating to any of the Assets or the Assumed Liabilities in reliance on the exceptions in clauses (b) or (c) above.

12.4 Legal Proceedings

If a Receiving Party becomes compelled in any Proceeding or is requested by a Governmental Body having regulatory jurisdiction over the Contemplated Transactions to make any disclosure that is prohibited or otherwise constrained by this Article 12, that Receiving Party shall provide the Disclosing Party with prompt notice of such compulsion or request so that it may seek an appropriate protective order or other appropriate remedy or waive compliance with the provisions of this Article 12. In the absence of a protective order or other remedy, the Receiving Party may disclose that

portion (and only that portion) of the Confidential Information of the Disclosing Party that, based upon advice of the Receiving Party's counsel, the Receiving Party is legally compelled to disclose or that has been requested by such Governmental Body, provided, however, that the Receiving Party shall use reasonable efforts to obtain reliable assurance that confidential treatment will be accorded by any Person to whom any Confidential Information is so disclosed. The provisions of this Section 12.4 do not apply to any Proceedings between the parties to this Agreement.

12.5 Return or Destruction of Confidential Information

If this Agreement is terminated, each Receiving Party shall (a) destroy all Confidential Information of the Disclosing Party prepared or generated by the Receiving Party without retaining a copy of any such material; (b) promptly deliver to the Disclosing Party all other Confidential Information of the Disclosing Party, together with all copies thereof, in the possession, custody or control of the Receiving Party or, alternatively, with the written consent of a Seller Contact or a Buyer Contact (whichever represents the Disclosing Party) destroy all such Confidential Information; and (c) certify all such destruction in writing to the Disclosing Party, provided, however, that the Receiving Party may retain a list that contains general descriptions of the information it has returned or destroyed to facilitate the resolution of any controversies after the Disclosing Party's Confidential Information is returned.

12.6 Attorney-Client Privilege

The Disclosing Party is not waiving, and will not be deemed to have waived or diminished, any of its attorney work product protections, attorney-client privileges or similar protections and privileges as a result of disclosing its Confidential Information (including Confidential Information related to pending or threatened litigation) to the Receiving Party, regardless of whether the Disclosing Party has asserted, or is or may be entitled to assert, such privileges and protections. The parties (a) share a common legal and commercial interest in all of the Disclosing Party's Confidential Information that is subject to such privileges and protections; (b) are or may become joint defendants in Proceedings to which the Disclosing Party's Confidential Information covered by such protections and privileges relates; (c) intend that such privileges and protections remain intact should either party become subject to any actual or threatened Proceeding to which the Disclosing Party's Confidential Information covered by such protections and privileges relates; and (d) intend that after the Closing the Receiving Party shall have the right to assert such protections and privileges. No Receiving Party shall admit, claim or contend, in Proceedings involving either party or otherwise, that any Disclosing Party waived any of its attorney work-product protections, attorney-client privileges or similar protections and privileges with respect to any information, documents or other material not disclosed to a Receiving Party due to the Disclosing Party disclosing its Confidential Information (including Confidential Information related to pending or threatened litigation) to the Receiving Party.

13. General Provisions

13.1 Expenses

Except as otherwise provided in this Agreement, each party to this Agreement will bear its respective fees and expenses incurred in connection with the preparation, negotiation, execution and performance of this Agreement and the Contemplated Transactions, including all fees and expense of its Representatives. Seller will pay all amounts payable to the Title Insurer in respect of the Title Commitments, copies of exceptions and the Title Policy, including premiums (including premiums for endorsements) and search fees. If this Agreement is terminated, the obligation of each party to pay its own fees and expenses will be subject to any rights of such party arising from a Breach of this Agreement by another party.

13.2 Public Announcements

Any public announcement, press release or similar publicity with respect to this Agreement or the Contemplated Transactions will be issued, if at all, at such time and in such manner as Seller determines. Except with the prior consent of Seller or as permitted by this Agreement, Buyer nor any of its Representatives shall disclose to any Person (a) the fact that any Confidential Information of Seller has been disclosed to Buyer or its Representatives, that Buyer or its Representatives have inspected any portion of the Confidential Information of Seller, that any Confidential Information of Buyer has been disclosed to Seller or their Representatives or that Seller or its Representatives have inspected any portion of the Confidential Information of Buyer or (b) any information about the Contemplated Transactions, including the status of such discussions or negotiations, the execution of any documents (including this Agreement) or any of the terms of the Contemplated Transactions or the related documents (including this Agreement). Seller and Buyer will consult with each other concerning the means by which Seller's employees, customers, suppliers and others having dealings with Seller will be informed of the Contemplated Transactions, and Buyer will have the right to be present for any such communication.

13.3 Notices

All notices, Consents, waivers and other communications required or permitted by this Agreement shall be in writing and shall be deemed given to a party when (a) delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid); (b) sent by facsimile or e-mail with confirmation of transmission by the transmitting equipment; or (c) received or rejected by the addressee, if sent by certified mail, return receipt requested, in each case to the following addresses, facsimile numbers or e-mail addresses and marked to the attention of the person (by name or title) designated below (or to such other address, facsimile number, e-mail address or person as a party may designate by notice to the other parties):

Seller (before the Closing):	1000 Color Place Apopka, FL 32703 Attention: Donnie Crandall, CEO Fax: (407) 598-4219
with a mandatory copy to:	Florida Water Services Corporation 1000 Color Place Apopka, FL 32703 Attention: Carlyn Kowalsky, General Counsel Fax: (407) 598-4241 E-mail: carlynk@florida-water.com Greenberg Traurig, P.A. 777 South Flagler Drive, Suite 300 East West Palm Beach, Florida 33401 Attention: Phillip C. Gildan Fax: (561) 838-8867 E-mail: gildanp@gtlaw.com
Seller (after the Closing):	Philip R. Halverson VP/General Counsel 30 West Superior Street Duluth, MN 55802 Fax: (218) 723-3960 E-mail: phalverson@allete.com
Buyer:	J. Lance Reese, Chairman Florida Water Services Authority E-mail: cacagms@aol.com
with a mandatory copy to:	Miller, Canfield, Paddock and Stone, PLC Attention: Richard I. Lott Fax: (850) 469-1088 E-mail: rilott@prodigy.net

13.4 Jurisdiction; Service of Process

Any Proceeding arising out of or relating to this Agreement or any Contemplated Transaction may be brought in the courts of the State of Florida, County of Escambia, or, if it has or can acquire jurisdiction, in the United States District Court for the Northern District of Florida, and each of the parties irrevocably submits to the exclusive jurisdiction of each such court in any such Proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the Proceeding shall be heard and determined only in any such court and agrees not to bring any Proceeding arising out of or relating to this Agreement or any Contemplated Transaction in any other court. The parties agree that either or both of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and bargained agreement between the parties irrevocably to waive any objections to venue or to convenience of forum. Process in any Proceeding referred to in the first sentence of this section may be served on any party anywhere in the world.

13.5 Enforcement of Agreement

(a) Notwithstanding any other provision in this Agreement, any dispute among the parties which arises from the Agreement shall be resolved by binding arbitration conducted in accordance with this Section 13.5. (the "Dispute Resolution Process") Either party may initiate the Dispute Resolution Process by providing written notice to the other party.

(b) After transmittal and receipt of a written notice specifying the area or areas of disagreement or dispute, the parties agree to meet at reasonable times and places, as mutually agreed upon, to discuss the issues.

(c) If discussions between the parties fail to resolve the dispute within fifteen (15) business days of the receipt by each party of the notice described in subsection (a) of this Section 13.5, a binding arbitration may then be initiated by either party by written notification to the other party of the existence of a dispute. Any and all issues related to the matter addressed by the written notice provided in subsection (a) of Section 13.5 or any response by the other party shall be raised and resolved in a single proceeding.

(d) The arbitrators shall be appointed and act as follows: (1) Each party shall appoint a person as arbitrator within ten (10) business days of the date one of the parties has notified the other of the existence of a dispute; (2) Each appointment shall be signified in writing to the counter party and the arbitrators so appointed, within ten (10) days of their acceptance of appointment, shall appoint a third arbitrator, who shall chair the panel. If the arbitrators appointed by the parties are unable to agree upon a third arbitrator, the same shall be appointed by the American Arbitration Association from its qualified panel of arbitrators. Each party shall have the right to veto up to two

appointments proposed by the American Arbitration Association. If either party fails to appoint an arbitrator within ten (10) business days from the date one of the parties has notified the other of the existence of a dispute, then an arbitrator shall be appointed by the American Arbitration Association from its qualified panel of arbitrators as the appointment of the party failing to timely appoint and the two so appointed shall appoint a third arbitrator to chair the panel. The party on whose behalf an arbitrator is appointed shall have the right to veto up to two of the arbitrators appointed by the American Arbitration Association; (3) Nothing in this Section 6.04 shall preclude the parties from mutually agreeing to a single arbitrator to resolve the dispute; (4) No arbitrator shall have a business or other pecuniary relationship with either party, except for payment of arbitrator's fees and expenses without the written consent of both parties.

(e) Arbitrators shall be sworn to perform their duties with impartiality and fidelity. In rendering any decision, the arbitrator shall proceed to consider the Agreement, the dispute identified in the notice and any response and the actions taken and the documentation thereof, conduct, and relative position, knowledge, and the ability of the parties in relation to the dispute.

(f) The arbitration hearing shall convene not earlier than sixty (60) days and not later than ninety (90) days of the acceptance of appointment of all of the arbitrators chosen by the parties unless the parties mutually agree to an earlier date. The arbitrators shall render a decision within ten (10) business days of the date on which the arbitration hearing concludes, and such decisions shall be in writing and in duplicate, one counterpart thereof to be delivered simultaneously to each of the parties. The decision shall contain findings of fact and conclusions of law and shall be final and binding upon the parties.

(g) The parties shall be entitled to discovery pursuant to the Florida Rules of Civil Procedure. All discovery requests by a party shall be enforced by the arbitrators. The arbitration hearing shall not proceed until all outstanding discovery requests have been fulfilled.

(h) The fees, charges and expenses of the arbitrators, any experts engaged by the arbitrators, the respective counsel engaged by the parties, and any witnesses called by the parties shall be paid as follows: the arbitrators shall order each party to pay their own fees, charges and expenses and assess the fees, charges and expenses of the arbitrators equally between the parties.

(i) The provisions of the Florida Arbitration Code, Chapter 682, Florida Statutes, and the Florida Evidence Code, Chapter 90, Florida Statutes, except to the extent inconsistent with the provisions of this Agreement, shall specifically be deemed to apply to any arbitration proceeding conducted hereunder. Unless the venue is mutually agreed upon otherwise by the parties, the venue for any arbitration commenced pursuant to this Section shall be in Pensacola, Florida.

13.6 Waiver; Remedies Cumulative

The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither any failure nor any delay by any party in exercising any right, power or privilege under this Agreement or any of the documents referred to in this Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law, (a) no claim or right arising out of this Agreement or any of the documents referred to in this Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other party; (b) no waiver that may be given by a party will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on one party will be deemed to be a waiver of any obligation of that party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the documents referred to in this Agreement.

13.7 Entire Agreement and Modification

This Agreement supersedes all prior agreements, whether written or oral, between the parties with respect to its subject matter (including any letter of intent and any confidentiality agreement between Buyer and Seller) and constitutes (along with the Disclosure Letter, Exhibits and other documents delivered pursuant to this Agreement) a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. This Agreement may not be amended, supplemented, or otherwise modified except by a written agreement executed by the party to be charged with the amendment.

13.8 Assignments, Successors and no Third-Party Rights

No party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other parties, except that Buyer may collaterally assign its rights hereunder to any financial institution providing financing in connection with the Contemplated Transactions. Subject to the preceding sentence, this Agreement will apply to, be binding in all respects upon and inure to the benefit of the successors and permitted assigns of the parties. Nothing expressed or referred to in this Agreement will be construed to give any Person other than the parties to this Agreement any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement, except such rights as shall inure to a successor or permitted assignee pursuant to this Section 13.8.

13.9 Severability

If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

13.10 Construction

The headings of Articles and Sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All references to "Articles," and "Sections" refer to the corresponding Articles and Sections of this Agreement.

13.11 Time of Essence

With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

13.12 Governing Law

This Agreement will be governed by and construed under the laws of the State of Florida without regard to conflicts-of-laws principles that would require the application of any other law.

13.13 Execution of Agreement

This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile shall be deemed to be their original signatures for all purposes.

13.14 Due Diligence.

This Agreement is being executed without all of its schedules and Exhibits being attached. As to the foregoing which are documents, the parties hereto agree to negotiate in good faith to finalize the form thereof on or before the Due Diligence Date (as hereinafter defined). As to the Schedules and other exhibits, all non-attached schedules and exhibits are to be prepared by the Seller. During the course of preparing such schedules and exhibits, the Seller will give to the Buyer drafts thereof as developed and supply to Buyer such information, and permit the Buyer to conduct such due diligence, in connection therewith as Buyer shall reasonably request. In addition, Seller

acknowledges that Buyer has not conducted the due diligence that Buyer desires to conduct prior to consummating the transactions contemplated hereby. Consequently, at such time as Seller completes the schedules and exhibits it is required to complete to be attached hereto, it shall deliver to Buyer a complete set thereof with a written notice stating that the schedules and exhibits so delivered are the final schedules and exhibits hereto that it is required to complete and deliver. The date of the foregoing, the "Exhibit Delivery Date". If the Exhibit Delivery Date has not occurred on or prior to thirty days after the date hereof or, if they are so delivered prior thereto but the Buyer in the exercise of its reasonable discretion is not satisfied with the substance thereof, the Buyer shall have the right to terminate this Agreement except that the Seller shall immediately pay to the Buyer the Due Diligence Expenses. The Buyer agrees that it will in good faith seek to accomplish its due diligence on or before six (6) weeks after the Exhibit Delivery Date. When it has completed its due diligence, it shall notify the Seller. If the Buyer is not satisfied in its reasonable discretion with the results of its due diligence, then the Buyer may terminate this Agreement except that the Seller shall immediately pay to the Buyer the Due Diligence Expenses. If the Buyer has not completed its due diligence within the aforesaid time, then the Seller may terminate this Agreement or if the expenses of the Buyer in conducting its due diligence are reasonably projected by Buyer at any time to exceed $150,000 and the Seller refuses to approve the reasonable projected amount over $150,000 as Due Diligence Expenses as defined herein and subject to reimbursement by the Seller, then the Buyer may terminate this Agreement, and, in each case, the Seller shall pay to the Buyer the Due Diligence Expense.

13.15 **Radon Gas.**

(a) RADON IS NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL AND STATE GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN FLORIDA. ADDITIONAL INFORMATION REGARDING RADON TESTING MAY BE OBTAINED FROM THE COUNTY PUBLIC HEALTH UNIT.

13.16 Limited Liability.

Neither the State of Florida nor any political subdivision or municipality thereof, nor the Buyer, shall be obligated (1) to exercise its ad valorem taxing power or any other taxing power in any form on any real or personal property to pay any liability arising out of, or in any connection whatsoever with, this Agreement, or to pay the principal of the Acquistion Bonds, the interest thereon or other costs incident thereto or (2) to pay the same from any other funds, except from the Net Revenues realized by the Buyer from its ownership or operation of the System, junior and subordinate to the payment of any Bonds or other indebtedness payable from such source. It is further agreed between the

Buyer and the Seller that this Agreement and any obligations arising in connection therewith, whether for payment of the Purchase Price, or for any claim of liability, remedy for breach, or otherwise, shall not constitute a lien on the System or any other property of the Authority, or any municipality, but shall constitute a lien only on the Pledged Revenues, in the manner provided in this Agreement.

Notwithstanding anything to the contrary contained herein or in any other instrument or document executed by or on behalf of the Buyer in connection herewith, no stipulation, covenant, agreement or obligation contained herein or therein shall be deemed or construed to be a stipulation, covenant, agreement, or obligation of any present or future member, officer, employee or agent of the Buyer, or of any incorporator, member, director, trustee, officer, employee or agent of any successor to the Buyer, in any such person's individual capacity, and no such person, in his individual capacity, shall be liable personally for any breach or non-observance of or for any failure to perform, fulfill or comply with any such stipulations, covenants, agreements or obligations, nor shall any recourse be had for the payment of the principal of, premium, if any, or interest on any of the Bonds or for any claim based thereon or on any such stipulation, covenant, agreement, or obligation, against any such person, in his individual capacity, either directly or through the Buyer or any successor to the Buyer, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such person, in his individual capacity, is hereby expressly waived and released. All references to the Buyer in this paragraph shall be deemed to include the Buyer, the City of Gulf Breeze, the City of Milton, their respective Mayors, Council Members, officers, employees, and agents.

The Buyer shall not be obligated to pay any liability, claim or obligation arising from or in connection with this Agreement or the transactions contemplated thereby, or any bonds or the interest thereon, from any funds of the Buyer derived from any source other than the Pledged Revenues, junior and subordinate the payment of the bonds secured by such Pledged Revenues. The Seller hereby agrees to indemnify and defend the Buyer and hold the Buyer harmless against any and all claims, losses liabilities or damages in any way growing out of or resulting from challenges to this Agreement or objections to the Authority to complete the contemplated transactions to the prior to closing, including, without limitation, all costs and expenses of the Buyer, including reasonable attorney's fees, incurred in the performance of any activities of the Buyer in connection with the foregoing. All references to the Buyer in this paragraph shall be deemed to include the Buyer, the City of Gulf Breeze, the City of Milton, their respective Mayors, Council Members, officers, employees, and agents.

Nothing herein shall be deemed to authorize, create or impose upon the City of Gulf Breeze or the City of Milton any obligation, duty, liability or responsibility for the taking of or refraining from any action, or for the payment of any sums for any reason whatsoever. The Seller hereby acknowledges that the City of Gulf Breeze and the City of

Milton shall have no liability whatsoever on account of this Agreement or the transactions contemplated hereby, including, without limitation, any claims or liabilities arising on account of any breach, misrepresentation or other action or failure to act on the part of the Buyer. The Seller hereby covenants and agrees that it will never seek remedy or recourse against, or seek to impose any liability upon, the City of Gulf Breeze or City of Milton, for any liability or claim arising in connection with or relating to this Agreement or the transactions contemplated thereby, whether against the Buyer, the Cities of Gulf Breeze or Milton directly, or otherwise, under any rule of law or equity, statute or constitution or by the enforcement of any provision of this Agreement, or by way of assessment or penalty or otherwise; and all such liability of any such entities is hereby expressly waived and released.

If, prior to closing, the Seller shall determine that, because of its indemnity obligations of clause (ii) of the preceding paragraph is no longer economically feasible to pursue to the Closing or the transaction contemplated hereby, Seller may elect to give written notice to the Buyer that it no longer wishes to complete the Closing transaction. Upon receipt of such notice, Buyer may elect to proceed with the Closing without such indemnity under said clause (ii) (in which case the Seller shall be excused from any further indemnity obligation under said clause (ii)), or to terminate its obligations hereunder (in which case the Seller shall be liable for Liquidated Damages).

The provisions of this Section shall survive the termination of this Agreement.

13.17 Obligations Subordinate.

All obligations of the Buyer hereunder or arising in connection therewith (the "Utility Acquisition Liabilities" or "UA Liabilities") shall be limited and special obligations of the Buyer, payable solely from the Net Revenues, junior and subordinate to the outstanding Bonds of the Authority. The UA Liabilities shall not be or constitute a general indebtedness, liability, general or moral obligation, or a pledge of the faith, credit or taxing power of the Buyer, the State of Florida, or any political subdivision or municipal corporation thereof, within the meaning of any constitutional or statutory provision or limitation. Neither the State of Florida nor any political subdivision or municipal corporation thereof, nor the Buyer shall be obligated (1) to levy ad valorem taxes on any property to pay the UA Liabilities or other costs incident thereto or (2) to pay the same from any other funds of the Buyer, except from the Net Revenues, junior and subordinate to the outstanding Bonds of the Authority. It is further agreed between the Buyer and the Seller that the UA Liabilities shall not constitute a lien upon the System or facilities, or any part thereof, or on any other property of the Buyer, but shall constitute a lien only on the Net Revenues, junior and subordinate to the outstanding Bonds of the Authority.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

Buyer: Florida Water Services Authority

By: J. Lance Rene

Its: Chairman

Seller: FLORIDA WATER SERVICES CORPORATION

By: Donnie R. Ch...

Its: PRESIDENT

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Ed Gray, III

rom: "Richard I. Lott" <rllott@prodigy.net>
'o: "ED, III GRAY (E-mail)" <edgray3@bellsouth.net>; "Brenda Pollak (E-mail)" <lbpbbp@attbl.com>; "Buz Eddy (E-mail)" <eaeddygbrz@juno.com>
Cc: "Matt Dannheisser (E-mail)" <MattDannheisser@aol.com>; "Roy Andrews (E-mail)" <rva@lalslaw.com>
Sent: Monday, September 16, 2002 7:46 PM
Attach: Sept Draft.DOC
Subject: Florida Water Services Asset Purchase Agreement

<< Sept Draft.DOC >>

Ladies & Gentlemen,

The Attachment is the latest draft from Phil Gildan, the attorney for Florida Water Services Corporation (the "Seller") relating to the purchase of the various water systems by Florida Water Services Authority (the "Buyer"). We had a telephone conference with Phil today and gave him our changes to the document. Tomorrow we are to met with him and his client in order to resolve the remaining issues. At this point, we cannot say what changes Phil's client will agree to, as he did not have the authority to make decision in this regard.

In order to give you opportunity to review the APA, we felt in necessary to forward the document in its present form. However, it is a work in progress and we have a number of matters yet to be negotiated. We thought it would be helpful to give you a list of many of the points we have made to the Company, so that you would be aware of the concerns we have with the attached draft . Although the list will not be complete, it will deal with the major points we made. These points are as follows:

1. It should be expressly stated in the document that neither the City of Gulf Breeze nor the City of Milton are liable as a result of the Asset Purchase Agreement ("APA"). This is probably unnecessary, but we thought that this is a change prudent to obtain. Matt Dannheisser has expressed his concern, which we all share, about the potential for any liability that might arise against the City in connection with the transaction. Matt has worried that somehow the Florida Water Services Authority might be disregarded as an entity, and its liabilities imposed upon the Cities, because the Buyer is a "shell" entity with no assets. This is known as "piercing the veil", that is, piercing the separation between FWSA and the City.

We routinely preface our discussions with FWS Corp by mentioning the fact that the Buyer (FWSA) has no assets, and the Seller (FWS Corp.) has no recourse against anyone. Terry Crawford, a corporate attorney with our Detroit office, is also working with us on this transaction because of his extensive experience in business acquisitions. Terry is of the opinion that there is no "piercing the veil" theory to attack an under-capitalized corporation, if the other party knows of the capital inadequacies of the party it is dealing with. Neither Terry nor I are aware of ANY authority for piercing a governmental separation, particularly when we are going to put into the agreement a provision that specifically and expressly (i) forbids any liability on the part of Gulf Breeze or Milton, (ii) has the Seller acknowledge and agree that it will not sue or assert liability against Gulf Breeze or Milton, and (iii) limits any liability of FWSA to the revenues realized from the Utility System, junior and subordinate to the payment of the Bonds. The Florida court cases upholding system-revenue limitations-of-liability are legion. Currently, the City already has a number of these types of obligations outstanding which limit recourse to the revenues of the utility, including Fairpoint Utilities and South Santa Rosa Utilities.

The language to be include in the Asset Purchase Agreement is expected to read as follows:

> Neither the State of Florida nor any political subdivision or municipality thereof, nor the Buyer, shall be obligated (1) to exercise its ad valorem taxing power or any other taxing power in any form on any real or personal property to pay any liability arising out of, or in any connection whatsoever with, this Agreement, or to pay the principal of the Bonds, the interest thereon or other costs incident thereto or (2) to pay the same from any other funds, except from the net revenues (the "Pledged

EXHIBIT "D"

Revenues") realized by the Buyer from its ownership or operation of the utility system acquired from the Seller (the "System"), junior and subordinate to the payment of any Bonds or other indebtedness payable from such source. It is further agreed between the Buyer and the Seller that this Agreement Agreement and any obligations arising in connection therewith, whether for payment of the Purchase Price, or for any claim of liability, remedy for breach, or otherwise, shall not constitute a lien on the System or any other property of the Authority, or any municipality, but shall constitute a lien only on the Pledged Revenues, in the manner provided in this Agreement.

Notwithstanding anything to the contrary contained herein or in any other instrument or document executed by or on behalf of the Buyer in connection herewith, no stipulation, covenant, agreement or obligation contained herein or therein shall be deemed or construed to be a stipulation, covenant, agreement, or obligation of any present or future member, officer, employee or agent of the Buyer, or of any incorporator, member, director, trustee, officer, employee or agent of any successor to the Buyer, in any such person's individual capacity, and no such person, in his individual capacity, shall be liable personally for any breach or non-observance of or for any failure to perform, fulfill or comply with any such stipulations, covenants, agreements or obligations, nor shall any recourse be had for the payment of the principal of, premium, if any, or interest on any of the Bonds or for any claim based thereon or on any such stipulation, covenant, agreement, or obligation, against any such person, in his individual capacity, either directly or through the Buyer or any successor to the Buyer, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such person, in his individual capacity, is hereby expressly waived and released. All references to the Buyer in this paragraph shall be deemed to include the Buyer, the City of Gulf Breeze, the City of Milton, their respective Mayors, Council Members, officers, employees, and agents.

The Buyer shall not be obligated to pay any liability, claim or obligation arising from or in connection with this Agreement or the transactions contemplated thereby, or any bonds or the interest thereon, from any funds of the Buyer derived from any source other than the Pledged Revenues, junior and subordinate the payment of the bonds secured by such Pledged Revenues. The Seller hereby agrees to indemnify and defend the Buyer and hold the Buyer harmless against any and all claims, losses, liabilities or damages to property or any injury or death of any person or persons occurring in connection with the construction, equipping and operation of the Project prior to closing, or for any liability any way growing out of or resulting from this Agreement, including, without without limitation, all costs and expenses of the Buyer, including reasonable attorney's fees, incurred in the performance of any activities of the Buyer in connection with the foregoing or the enforcement of any agreement of the Borrower herein contained. . All references to the Buyer in this paragraph shall be deemed to include the Buyer, the City of Gulf Breeze, the City of Milton, their respective Mayors, Council Members, officers, employees, and agents.

Nothing herein shall be deemed to authorize, create or impose upon the City of Gulf Breeze or the City of Milton any obligation, duty, liability or responsibility for the taking of or refraining from any action, or for the payment of any sums for any reason whatsoever. The Seller hereby acknowledges acknowledges that the City of Gulf Breeze and the City of Milton shall have no liability whatsoever on account of this Agreement or the transactions contemplated hereby, including, without limitation, any claims or liabilities arising on account of any breach, misrepresentation or other action or failure to act on the part of the Buyer. The Seller hereby covenants and agrees that it will never seek remedy or recourse against, or seek to impose any liability upon, the City of Gulf Breeze or City of Milton, for any liability or claim arising in connection with or relating to this Agreement or the transactions contemplated thereby, whether against the Buyer, the Cities of Gulf Breeze or Milton directly, or otherwise, under any rule of law or equity, statute or constitution or by the enforcement of any provision of this Agreement, or by way of assessment or penalty or otherwise; and all such liability of any such entities is hereby expressly waived and released.

The provisions of this Section shall survive the termination of this Agreement.

2. Since the Buyer intends to make offers of employment to all (or almost all) of the employees of the Seller, we need representations and warranties in regard to the present employees of the Seller. Furthermore, the obligation of the Buyer to make offers to employees of the Seller has to be conditional on the employees meeting certain standards and filling out employment applications. As the Buyer will be matching in most cases the compensation of the existing employees we will need to have represented to the Buyer what this compensation is (as well as fringe benefits).

3. Presently, the APA does not have representations of any substance as to ERISA matters (i.e. pension and multi-employer plans). We have been advised by teh Seller that the only plan is a 401K that will be converted to a municipal-type 403(B) plan. Our own ERISA partner has indicated that there is a potential liability of FWS Corp. for underfunded plans of other affiliates of the parent company. Accordingly, we are preparing representations and warranties that we want in this regard.

4. The representations in regard to Intellectual Property both in terms of the assets being transferred and in terms of representations and warranties are weak. We have already prepared and sent to the Seller the representations we want in this regard, as well as a change in the transfer of assets section. Because we have seen acqusitions get into trouble because they closed without proper examination of the software licenses, we feel that this must be completed prior to the Closing of the transfer of assets to the Buyer.

5. Since the schedules and exhibits to the APA will in most instances not be attached to the APA at closing, we have sent to the Seller a section to be added to the APA which, essentially, permits the Buyer to terminate the transaction if the schedules and exhibits are not satisfactory to it in its reasonable judgment. We have also sent to Phil language which, again, allows the Buyer to walk from the transactions if the results of its due diligence investigation is not satisfactory to it in its reasonable judgment.

6. Presently the APA provides for reimbursement of the Buyer of up to $150,000 for due diligence expense incurred by the Buyer. The Buyer has agreed to increase this amount to $200,000. We have sent language to Phil stating that if the Buyer anticipates that the due diligence expense incurred by it is anticipated to go above $200,000 and the Seller refuses to reimburse the Buyer for this additional expense, the Buyer can, again, terminate the APA.

7. The APA presently uses the word "material" too many times and the APA piles the term "material" upon the term "material". The consequence of this is that it would be very difficult for the Buyer to have a claim for indemnification unless the basis for the claim were truly catastrophic. We have suggested that the word "material" be, in most instances, deleted from the APA and, instead, the concept in a more precise and less severe manner be implemented in the APA by agreeing that claims for indemnity under a certain size not be subject to indemnification.

8. The time period for making all indemnification claims is two (2) years in the present draft. This is usual for many representations and claims but not for representations relating, for example, to environmental matters or title matters. Consequently, we want the time period for these claims to be longer, and Phil has indicated his agreement that a three-year period corresponding to the three-year payment deferral period, is reasonable.

9. The APA calls for the Seller to keep all cash, with the current payables and receiveables to be assumed by the Buyer. This only works properly if the payables and receives are in balance. We want an adjustment mechanism so that the price goes up or down depending on the amount by which current assets (or a similar concept) exceeds current liabilities. Presently, there is no such mechanism in the APA so, for example, if the accounts receivable were very low and the trade payables assumed by the Buyer were high, the Buyer would effectively be paying more than it would expect. Of course, this could hurt the Buyer if the situation were reversed (trade payables low but accounts receivable high) but it is generally done in transactions so that each party is treated fairly and, of course, in most deals, the amount outstanding in trade payables and accounts are more in the control of the Seller than the Buyer.

10. We had extensive discussions with Phil on identifying all the easements that the Seller owns and whether the Seller would represent and warrant that the System was located on either owned real estate, leased real estate, or on easement. We requested that the Seller give us representations that all of the facilities, to the extent not located on property owned and conveyed at closing, were properly located in easements recorded in favor of Seller and conveyed to the Buyer. They are not willing to give this representation because they are certain, given the nature of utilities and contractors, that there are probably some pipes, lines etc. not placed in easements.

CIRCUIT COURT
NINTH JUDICIAL CIRCUIT
IN AND FOR OSCEOLA COUNTY, FLORIDA

OSCEOLA COUNTY, a political subdivision of the State of Florida,

Plaintiff,

CASE NO: C102-0C-2810

v.

CITY OF GULF BREEZE, Florida, CITY OF MILTON, Florida, municipal corporations of the State of Florida, and FLORIDA WATER SERVICES AUTHORITY, a special-purpose governmental entity,

Defendants.
_____/

PLAINTIFF'S REPLY TO DEFENDANTS' MOTION TO DISMISS AMENDED COMPLAINT[1]

COMES NOW PLAINTIFF OSCEOLA COUNTY, by and through its undersigned attorneys, to reply to the Motion to Dismiss Plaintiff's Complaint interposed by Defendants, City of Gulf Breeze, City of Milton, and the Florida Water Services Authority (FWSA) to controvert the declaratory judgment action that Osceola County filed against Defendants on 13 December 2002.

[1] This is a captioning error, as the instrument to which Defendants responded here was Plaintiff's initial pleading in this matter, not an amended one.

I. STANDARD OF REVIEW

1. A declaratory judgment action under Fla. Stat. ch. 86 is an action both substantive and remedial, the purpose of which is to settle and afford relief from insecurity and uncertainty with respect to rights, status, and other equitable or legal relations. Declaratory judgment actions are to be liberally construed. Fla. Stat. ch. 86.101.

2. This rule of liberal construction extends to instruments filed in opposition to motions to dismiss. When a trial court rules on a motion to dismiss, the trial court: (1) is confined to the allegations within the four corners of the complaint; (2) must accept those allegations as true; and (3) may not speculate as to what the true facts may be or what facts may ultimately be proved in the trial of the cause. *Lopez-Infante v. Union Central Life Insurance Co.*, 809 So.2d 13, 15 (Fla. 3rd DCA 2002). Dismissal with prejudice is a severe sanction and one which is not warranted when a party is not given the opportunity to amend its petition. *Drakeford v. Barnett Bank*, 694 So.2d 822, 824 (Fla. 2nd DCA 1997). Dismissal should only be granted when the pleader has failed to state a cause of action and it conclusively appears that there is no possible way to amend the complaint to state a cause of action, or if there has been an abuse of the privilege to amend. *Al-Hakim v. Holder*, 787 So.2d 939, 942 (Fla. 2nd DCA 2001).

II. ANALYSIS

A. Osceola County Has Standing To Bring This Suit To Protect The County's Constitutional Home Rule Authority As Well As The County's Best Interest As A Customer Of Florida Water Services Corporation

3. Fla. Const. art. VIII, § 1(a) authorizes the political subdivision of the State of Florida into counties. Under Fla. Stat. ch. 125.01(1)(a), counties are empowered to prosecute legal causes in their own behalf. Declaratory judgment actions are prominent among the legal causes that counties are permitted to prosecute in their own behalf. *Santa Rosa County v. Administration Comm'n, Div. of Admin. Hearings, et al.*, 661 So.2d 1190 (Fla. 1995)(county sought declaratory judgment to ascertain legality of unfunded mandates).

4. A county has standing to sue for a declaratory judgment if the trial court finds:

> there is a bona fide, actual, present practical need for the declaration; that the declaration should deal with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts; that some immunity, power, privilege or right of the complaining party is dependent upon the facts or the law applicable to the facts; that there is some person or persons who have, or reasonably may have an actual, present, adverse and antagonistic interest in the subject matter, either in fact or law; that the antagonistic and adverse interest are all before the court by proper process or class representation and that the relief sought is not merely the giving of legal advice by

> the courts or the answer to questions propounded from curiosity. These elements are necessary . . . to maintain the status of the proceeding as being judicial in nature and therefore within the constitutional powers of the courts.

Santa Rosa County, 661 So.2d at 1192-1193. To evaluate the foregoing elements in the context of the facts here is to refute Defendants' allegations regarding standing.

5. There is a *bona fide*, present, practical need for the declarations sought by Osceola County. Defendants and the Florida Water Services Corporation (Florida Water) have signed an acquisition agreement whereby Defendants will acquire absolute and arguably unassailable control over the eight water and wastewater treatment systems located within Osceola County. Both Osceola County and its residents receive water and wastewater treatment services from these systems. Time is of the essence because the sale is scheduled to close by 14 February 2003.

6. The declaration deals with a present controversy as to a state of facts. Defendants contend that Fla. Stat. ch. 163 authorizes them to acquire water and wastewater treatment systems that: (1) are not located within the bounds of Defendant municipalities; (2) are not adjacent to or contiguous with Defendant municipalities; (3) have no customers within, adjacent to, or contiguous with Defendant municipalities; and (4) have no attendant legal or equitable considerations justifying ownership by Defendant municipalities or their proxy, Defendant FWSA.

7. Osceola County disagrees with Defendants and asks this Court, among other things, to declare that Fla. Stat. ch. 163 neither envisions nor authorizes the kind of usurpation of constitutional home-rule power that Defendants are attempting to effect here. Osceola County maintains that it is beyond the scope of an interlocal agreement to wrest control of water systems from the County and vest it in a governmental authority residing over 500 miles away which has no accountability in management, operation, or rate-fixing to either the Osceola County customers served or any other entity.

8. Turning to the next element, Osceola County believes that Defendants' conduct violates the County's constitutional home rule rights. Fla. Const. art. VIII, § 1(g) vests home rule power in Osceola County to protect the interests of the County and its residents. Under Fla. Stat. ch. 125.01(1)(k), Osceola County has the authority to "[p]rovide and regulate . . . water and alternative water supplies, including, but not limited to, reclaimed water . . ."

9. The Florida Constitution provides Osceola County home rule authority to take such actions as are necessary to protect the best interests of the County and its residents.

10. The Florida Statutes also evince a legislative determination that local governmental control of water and other utility systems serves the public purposes for

which such governments have been ordained as evidenced by the following: (a) the Local Government Comprehensive Planning and Land Development Regulatory Act, Part II, Fla. Stat. ch. 163, requires each county and municipality to adopt a financially feasible local government comprehensive plan and implementing land development regulations; (b) Fla. Stat. ch. 163.3177(3) requires each comprehensive plan to contain a mandatory capital improvement element for all public facilities including sanitary sewer and potable water facilities. *See* Fla. Stat. ch. 163.3164(24) (definition of "public facilities")[2]; (c) Fla. Stat. ch. 163.3180 establishes this concurrency mandate for the availability of public facilities as a key enforcement and monitoring mechanism within the local comprehensive planning process; and (d) Fla. Stat. ch. 164.1051, dealing with intergovernmental disputes, recognizes the importance of the matters at issue by expressly including service provision areas (ch. 164.1051(3)) and allocations of resources, including water, land, or other natural resources (ch. 164.1051(4)) within the matters to which such law shall apply.

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[2]Specifically, Fla. Stat. ch. 163.3180(2)(a) provides:

> Consistent with public health and safety, sanitary sewer, solid waste, drainage, and potable water facilities shall be in place and available to serve new development no later than the issuance by the local government of a certificate of occupancy or its functional equivalent.

Id.

11. Fla. Stat. ch. 367 provides the statutory authority for the regulation of privately-owned water and wastewater systems as to both service and rates and grants the Florida Public Service Commission (FPSC) the exclusive jurisdiction for such regulatory functions. Additionally, under such regulatory scheme, Fla. Stat. ch. 367.171 grants to each county the option to exclude itself from regulation by the FPSC and regulate the rates and services of a privately-owned utility by the adoption of a resolution by the board of county commissioners. Fla. Stat. ch. 367.022 exempts from such regulatory scheme systems owned, operated, and managed by governmental authorities.

12. Acquisition of the Florida Water utility assets by the FWSA places exclusive jurisdiction over the rates and service of the existing Florida Water utility assets in the FWSA governing board. The power of Osceola County to provide and plan for the availability of essential water and wastewater public facilities concurrent with the demand for such facilities within the County is abrogated and placed within the sole discretion of the Gulf Breeze City Council in violation of the power of local self-government constitutionally granted to Osceola County as a charter county. Such abrogation of the power of local self-government provided in the Osceola County charter jeopardizes the County's power to comply with the statutory mandated local comprehensive planning requirements and places all growth management initiatives

relating to water and wastewater public facilities within the untrammeled whim and discretion of the FWSA governing board.

13. Defendants mischaracterize the County's pleadings by suggesting that the County's Complaint alleges the County regulates private utilities within the County (Motion to Dismiss at para. 19). Osceola County does not regulate private utilities and never alleges in its Complaint that it does so. However, Defendants choose to ignore that Osceola Count is a customer of Florida Water and has paid Capital Charges to Florida Water in the past to hook onto the Florida Water system.

14. Defendants allege that the FPSC does not have authority to address any issues raised by interested parties, including customers of Florida Water, but rather must approve the transfer from Florida Water to FWSA "as of right." Defendants also allege that counties which have elected to regulate private utilities within their political boundaries also cannot address issues raised by interested parties, including customers, but rather must approve the transfer from Florida Water to FWSA "as of right." As evidenced by Defendants' Motion to Dismiss, Defendants further seek to deny interested parties, including customers, access to any court in which to seek redress or a hearing on such interested party's issues. Effectively, Defendants would have this Court believe that Florida constitutional, statutory, and common law countenance a situation where an adversely effected, interested party would be left

with no legal recourse to any court or regulatory authority for redress of grievances. This proposition flies in the face of all accepted notions of due process reflected in the United States and Florida Constitutions; this Court should summarily reject the argument.

15. Osceola County has standing to bring this action for two reasons. First, the County possesses constitutional home rule authority to protect the morals, health, welfare, and safety of the County and its residents, as reflected in many Florida Statutes, which authority FWSA seeks to abrogate by its proposed acquisition. Second, Osceola County is a customer served by Florida Water and adversely effected by the proposed FWSA acquisition.

16. Defendants also suggest that Osceola County must presume legislation to be valid and thus the County has no standing to assert its causes of action before this Court (Motion to Dismiss, para. 7). However, Defendants mischaracterize the premise of Osceola County's Complaint. Osceola County does not attack the validity of Fla. Stat. ch. 163; rather the County contests Defendants' attempt to misuse Chapter 163 in such a way as to unlawfully infringe upon the County's constitutional home rule powers and statutory obligations.

17. Osceola County asserts that, in light of the equitable and factual considerations operative here, the County's constitutional home rule powers, as more

specifically defined, in part, by the Florida Statutes, predominate over Defendants' right to pursue profits by acquiring a utility system which bears no connection to the two cities or their respective residents. Among the factors compelling this conclusion are: (1) No Florida Water assets or customers are located within Gulf Breeze or Milton; (2) Florida Water assets in Osceola County are located over 500 miles from Gulf Breeze and Milton; (3) Osceola County is not entitled to participate in any aspect of the FWSA's governance, despite the FWSA's assertion of control over water and wastewater systems serving Osceola County and its residents; (4) Defendants allege that Osceola County is not entitled to notice of FWSA meetings; and (5) the structure of the FWSA and terms of the proposed acquisition agreement makes it apparent that the FWSA is nothing more than a proxy through which Gulf Breeze and Milton can ensure a steady flow of profit to their respective municipal coffers. Indeed, while the Cities of Gulf Breeze and Milton are guaranteed profit from the utility operations each year, neither the Cities nor FWSA are responsible for structuring the bond financing for the acquisition. Rather, Florida Water, the seller, is responsible for structuring the financing for the buyer, FWSA.

18. Osceola County has an actual, present, adverse, and antagonistic interest in the subject matter of this law suit, both in fact and law. In fact, Osceola County is a Florida Water customer, having paid connection fees and received water and

wastewater treatment services for several county facilities. It disserves Osceola County's interests to have control of these systems reposed in a governmental entity so far removed in terms of geography and participatory opportunities. In law, the parties could not be more divergent in their views as to which statutory scheme applies in this situation. Defendants argue that Fla. Stat. ch. 163 operates to make their interlocal agreement trump Osceola County's constitutional home rule rights.

19. Osceola County believes such a result to be equally incongruous and improper in light of the County's constitutional home rule powers and the statutory autonomy the County enjoys under Fla. Stat. ch. 125, as well as the legislative history and intent behind Fla. Stat. ch. 163.

20. The antagonistic and adverse interests adverted to in the preceding paragraphs are all before this Court by proper process. This Court has jurisdiction over the cause. Declaratory judgment is a permissible medium by which to seek its resolution. There are no procedural or substantive obstacles to this Court adjudicating this action and thereby delineating the parties' rights.

21. Finally, Osceola County has not pursued this cause as a subterfuge for obtaining an advisory opinion or to satisfy idle curiosity. To the contrary, the parties are irreconcilably adverse, the facts underlying their dispute are manifest, and the

constitutional implications and statutes pertinent to this dispute create questions of law that must be resolved by this Court.

22. Defendants misapprehend the nature of Osceola County's constitutional exceptions herein. Osceola County does not dispute the constitutionality of Fla. Stat. ch. 163. Rather, Osceola County's objections to Defendants' conduct arise from the purely commercial venture that Defendants have structured under Fla. Stat. 163 and how Defendant's venture adversely impacts Osceola County's fundamental rights to constitutional due process and home rule.

B. No Valid Municipal Purpose Will Be Served By The Cities Of Gulf Breeze And Milton Purchasing The Facilities Of Florida Water Services Corporation

23. Under the Municipal Home Rule Powers Act, Fla. Stat. ch. 166.01, cities have broad home rule powers within their jurisdictional limits, subject to the caveat that the city's powers must be exercised for "valid municipal purposes." *City of Ocala v. Nye*, 608 So.2d 15 (Fla. 1992). A municipal action has no valid municipal purpose if such action bears no relation to the morals, health, welfare, protection, and safety of the municipality's citizens. *City of Ormond Beach v. County of Volusia*, 535 So.2d 302 (Fla. 5th DCA 1988) [emphasis added].

24. Here, Gulf Breeze and Milton have attempted to create in the FWSA an investment/entrepreneurial entity by which the cities can enjoy a guaranteed

minimum level of annual profits. As the FWSA's attorney explained to Gulf Breeze's City Attorney in correspondence dated 16 September 2002, "As you know, the objective we are pursuing is to implement a plan to expand the revenue sources of the City without creating any liability." Indeed, the FWSA has been unapologetic in stating that the proposed acquisition is strictly a business proposition for the profits that Florida Water will generate for the cities. The FWSA intends to issue bonds to fund its acquisition of Florida Water's assets. However, the Florida Supreme Court has spoken regarding the lawfulness of a municipality issuing bonds for profit-making business ventures, finding that no valid public purpose exists where the primary purpose of a bond issue is obviously to obtain proceeds to be used in an investment for profit. *State v. City of Orlando*, 576 So.2d 1315 (Fla. 1991). The declaration that the court made in *City of Orlando* is equally apposite here:

> A municipality exists . . . to provide services to its inhabitants. . . . We see no valid public purpose in investing for investing's sake. Making a profit is an aspect of commerce more properly left to commercial banking and business entities.

576 So.2d at 1317.

25. Indeed, it is beyond dispute that all municipal or county actions must serve a county or municipal purpose. Fla. Const. art. VIII, § 2(b) (municipalities may only exercise powers that serve a municipal purpose); *see also, Bruton v. Dade*

County, 166 So. 2d 445, 447 (Fla. 1964); *Basic Energy Corp. v. Hamilton County*, 652 So. 2d 1237, 1239 (Fla. 1st DCA 1995). The term "municipal purpose" has been defined as encompassing "all activities essential to the health, morals, protection and welfare of the municipality." *See State v. City of Jacksonville*, 50 So. 2d 532, 535 (Fla. 1951). "A municipality exists . . . to provide services to its inhabitants." *City of Orlando, supra*, 576 So. at 1317. "Municipal functions include functions which specifically and peculiarly promote the comfort, convenience, safety and happiness of the citizens of the municipality rather than the welfare of the general public." *Greater Orlando Aviation Authority v. Crotty*, 775 So. 2d 978, 981 (Fla. 5th DCA 2000), rev. dismissed, 790 So. 2d 1103 (Fla. 2001) [emphasis added]. When a municipal act "has no reasonable relationship to the morals, health, welfare and safety of the people of a municipality, it is beyond the authorized exercise of the police power of the municipality." *See City of Ormond Beach v. County of Volusia*, 535 So. 2d 302, 304 (Fla. 5th DCA 1988). Municipal functions are those created or granted for the special benefit and advantage of the urban community embraced within the corporate boundaries. *See Chardkoff Junk Co. v. City of Tampa*, 135 So. 457 (Fla. 1931); *see also, City of Winter Park v. Montesi*, 448 So. 2d 1242 (Fla. 5th DCA 1985).

26. The furnishing of water and sewer services proposed by Defendants to residents of another city or county would not serve a municipal purpose for the

residents of the Cities of Milton and Gulf Breeze. See, e.g., *Kelson v. City of Pensacola*, 483 So. 2d 77 (Fla. 1st DCA 1986) (recognizing that a project for the benefit of another jurisdiction's residents does not serve a valid municipal purpose in the original jurisdiction).

27. In this regard, *Kelson v. City of Pensacola*, *supra*, 483 So.2d at 77, is instructive. There, Escambia County challenged Fla. Stat. chapter 163, Part III, which allocated a portion of county funds to a community redevelopment agency established and operated by the City of Pensacola. The county alleged that this allocation of county revenue violated Fla. Const. art. Article VII, § 9(a) which prohibits the use of county funds for other than county purposes. Escambia County argued that the community redevelopment agency did not serve a county purpose because it operated solely within the inner city and the county had no input as to how the money was spent. *Id.* at 78. The court disagreed with Escambia County's allegations and concluded that the Community Redevelopment Agency's use of county funds served a valid county purpose because:

> All of the property in the Community Redevelopment Area is in Escambia County as well as the City of Pensacola. All who reside in the Community Redevelopment Area also reside in the County. The County benefits from the reduction of economically depressed areas, which areas also create burdens to the County.

Id. at 79.

28. Unlike *Kelson*, where county revenue was being expended for the benefit of county residents within the county, the Cities of Gulf Breeze and Milton have formed the FWSA to acquire the water and wastewater utility assets of Florida Water Services. None of the Florida Water Services' assets are within these two municipalities and neither City nor its residents are served by Florida Water Services. In fact, the closest Florida Water Services system is approximately 100 miles from Milton and Gulf Breeze. Accordingly, the formation of the FWSA and its provision of utility service wholly and exclusively concerns residents of other cities and counties. Such an action on the part of Milton and Gulf Breeze does not serve any valid municipal purpose. Rather, the facts here more closely resemble those in *City of Orlando*, *supra*, 576 So. 2d at 1315, where the Florida Supreme Court declared that, while certain ventures may be profitable for a local government, such profitability does not qualify as a proper municipal or county purpose.

29. In *City of Orlando*, the city sought to validate a proposed bond issue. The proceeds were to be loaned to other governmental units in the State of Florida. The primary purpose of the bonds, therefore, was to "obtain proceeds that will be used to invest for a profit." *Id.* at 1317. On this fact, the court decided:

> We now conclude that borrowing money for the primary purpose of reinvestment is not a valid municipal purpose as contemplated by article VIII, section 2(b). A municipality exists in order to provide services to its inhabitants. As noted in then Chief Justice McDonald's dissenting opinion in *State v. City of Panama City Beach*, we "see no valid public purpose in investing for investing's sake. Making a profit on an investment is an aspect of commerce more properly left to commercial banking and business entities."

Id. (quoting McDonald, C.J., dissenting, 529 So. 2d at 257). This logic can be applied to the formation of the FWSA and the potential acquisition of water and sewer facilities of Florida Water, which serve the residents of other cities and counties in the state. Accordingly, the only purpose such an acquisition could be designed to serve is the generation of profit for Milton and Gulf Breeze. In fact, several news articles and statements issued by representatives of Milton and Gulf Breeze have affirmed that their primary motivation is financial profit for the cities. Additionally, the interlocal agreement creating the FWSA provides for the Cities of Milton and Gulf Breeze to receive certain guaranteed profits every year from the operation of the Florida Water facilities. In the words of the Florida Supreme Court, a purely profit making motivation does not serve a valid municipal purpose. *Id.*; *see also, Crotty, supra*, 775 So. 2d at 978 (concluding the operation of a hotel was purely profit-oriented and as such was primarily a private purpose, not a municipal one).

30. Also exemplary on the question of municipal purpose is *Basic Energy Corp. v. Hamilton County*, *supra*, 652 So. 2d at 1237. There, the County and the City of Jasper sought to condemn under the city's powers property that was to be used as the site for a prison to be owned and operated by the State of Florida. The court found that, while the City of Jasper had the statutory authority to condemn property and to construct jails, there was no valid municipal purpose. The court declared:

> The donation of land for the construction of a state prison may incidentally relate to the protection of municipal inhabitants; however, this purpose is no more particular to residents of the city of Jasper than to any other inhabitants of the state. Thus, we conclude no municipal purpose has been asserted.

Id. at 1239 (emphasis in original).

31. Accordingly, absent a valid municipal purpose which serves the morals, health, welfare, and safety of the inhabitants of the Cities of Milton and Gulf Breeze, those two municipalities may not act to form the FWSA and authorize the acquisition of Florida Water's assets. *See City of Boca Raton v. Gidman*, 440 So. 2d 1277, 1280 (Fla. 1983) (stipulating the first question for any municipal act is whether "the action [was] undertaken for a municipal purpose?"). In the present circumstances, the acquisition of water and sewer utilities in other parts of the state for the sole purpose of generating a profit is not a municipal purpose.

32. The Cities cannot lawfully form an authority and issue bonds for the sole purpose of operating a business for profit, especially when doing so redounds to the material detriment of Osceola County by abrogating both the County's constitutional home rule powers and its statutory comprehensive planning and growth management responsibilities.

C. Florida Law Bars Defendants' Extraterritorial Assertion Of Ownership Rights Over Osceola County's Water Systems

33. The fundamental statutory and constitutional predicate for the exercise of joint powers by local government pursuant to an interlocal agreement under the authority of Part II, Fla. Stat. ch. 163, is declared in Fla. Stat. ch. 163.01(4):

> A local agency of this state may exercise jointly with any other public agency of the state, of any other state, or of the United States Government any power, privilege, or authority which such agencies share in common and which each might exercise separately.

Neither Gulf Breeze nor Milton shares in common the power to acquire water and wastewater utility systems outside their boundaries absent the consent or acquiescence of the local governments within whose jurisdiction such utility systems are located. Any joint power exercised through the creation of a separate legal entity pursuant to Fla. Stat. ch. 163.01(7)(g)1 cannot be a power that neither Milton nor Gulf Breeze shares in common.

34. Fla. Stat. ch. 163.01(7)(g) mandates that:

> [A]ny separate legal entity created under this section, the membership of which is limited to municipalities and counties of the State, may acquire, own, construct, improve, operate, and manage public facilities relating to a governmental function or purpose, including, but not limited to . . . water or alternative water supply facilities . . . which may serve populations within or outside of the members of the entity.

35. The rule in Florida is that any extraterritorial exercise of municipal power must be authorized by general or special law. This rule is constitutional in origin and affirmed by Fla. Stat. ch. 166.021. Fla. Const. art. VIII, § 2(c) mandates that "[m]unicipal annexation of unincorporated territory, merger of municipalities, and exercises of extra-territorial powers by municipalities shall be as provided by general or special law." *Id.* The Municipal Home Rule Powers Act specifically recognizes that

> pursuant to the grant of power set forth in s. 2(b), Art. VIII of the State Constitution, the legislative body of each municipality has the power to enact legislation concerning any subject matter upon which the State Legislature may act, except:
>
> (a) The subjects of annexation, merger, and exercise of extraterritorial power, which require general or special law pursuant to s. 2(c), Art. VIII of the State Constitution ...

Fla. Stat. ch. 166.021(3). Thus, the powers of a municipality end at the municipal boundary and cannot, absent a plain manifestation of legislative intent, be exercised beyond the municipality's limits. Consequently, because Fla. Stat. ch. 163.01(4) provides that public agencies may exercise jointly any power that such agencies share in common and which each might exercise separately, the Cities of Gulf Breeze and Milton must have either a general law or special law authorization to purchase the Florida Water's assets through the FWSA. *See Gaines v. City of Orlando*, 450 So. 2d 1174 (Fla. 5th DCA 1984); *State v. City of Riviera Beach*, 397 So. 2d 685 (Fla. 1981).

36. The only exception to this constitutional limitation on municipal power recognized by the Florida courts is the extraterritorial exercise of proprietary powers by municipalities where such powers are "supported by or derived from legislative grant." *Id.* at 688. Defendants' Motion to Dismiss, at para. 20, cites *State v. City of Riviera Beach, supra*, 397 So.2d at 685, where the Florida Supreme Court validated a revenue bond issue by the City of Riviera Beach to fund an industrial project in an adjoining unincorporated area of the county. Despite the lack of a clear grant of extraterritorial powers to municipalities, the Supreme Court discerned the legislative intent of the Florida Industrial Development Financing Act, Fla. Stat. Part II, ch. 159, and concluded:

> The legislature, in other words, has found that the undertaking of industrial development projects by local government is a matter of state interest and that the issuance of bonds in support of these projects by local governments without regard to the boundaries between them better serves the state interest or purpose more effectively and efficiently...The Act, construed as a whole, clearly provides for the undertaking by a municipality of an industrial development project located outside of its boundaries.

Id. at 687.

37. However, it is critical to recognize that after finding legislative authorization for the exercise of extraterritorial powers by the City of Riviera Beach, the Florida Supreme Court next analyzed if, under the facts of that particular case, a public purpose was served by the undertaking of an industrial development project outside the municipal boundaries. The Court determined that the requisite public purpose was present because "of the existence of a benefit nexus between the proposed project and the city and its inhabitants." *Id.* at 688. The Court found:

> Benefits are abundantly clear from evidence which shows the proximity of the project to the city, the job opportunities, the equal opportunity employment, the wage scales, the employee training programs, stimuli to the local economy, and the mutual desire of the company and the city that the project site become a part of the city.

Id. at 688. Accordingly, the general legislative authorization cited by Defendants in Fla. Stat. ch. 163 is not enough to support the Defendants' attempt to exercise

extraterritorial powers. A valid municipal purpose must still be served by Defendants' proposed acquisition under the particular facts permitted before a municipality may validly act outside its boundaries.

38. For this reason also, Defendants' attempt to construe the Supreme Court's dicta in *City of Orlando*, *supra*, 576 So.2d at 1315, referring to the Interlocal Cooperation Act as possibly authorizing and validating Defendants' profit motivated acquisition of FWSA, is misplaced. As the precedent on this topic discussed previously herein made plain, the courts remain obligated to determine whether a valid municipal purpose impacting the health, morals, protection, and welfare of the residents of the Cities of Gulf Breeze and Milton is served by the proposed acquisition. Defendants' proposed acquisition has no animus other than profit. No valid municipal purpose is so served.

39. In addition, both the legislative history of this section, and precedent evaluating municipal acquisition of water systems, show that Fla. Stat. ch. 163.01(7)(g) did not authorize the artifice that Defendants attempt here. The Legislative Staff Report for this section (then known as House Bill 1323; ch. 97-236, *Laws of Florida*) confirms that the Legislature never intended for municipal powers to be extended to authorize entry into interlocal agreements for the acquisition and maintenance of water supply assets by local governments which did not have any

assets or customers of the utility to be acquired within its political borders. The Staff Report explained that ". . . ch. 163, F.S., regulates interlocal agreements, whereby cities or counties enter into agreements to provide services, or share expenses for services *which their residents need.*" [Emphasis added.]

40. The acquisition of 152 water and wastewater utility systems by Milton and Gulf Breeze, all of which are located outside of either City's jurisdictional boundaries and provide no service to the residents of either City, without the consent or acquiescence of the local governments within whose jurisdiction such utility systems are located, cannot constitute a joint power which each City shares in common. The provision of Fla. Stat. ch. 163.01(7)(g)(1), providing that a separate legal entity can acquire systems that serve populations outside of the members of the entity, does not extend the common power of either Milton or Gulf Breeze since no Florida Water utility assets are located within the boundaries of either government.

41. Similarly, where the judiciary has upheld municipalities' extraterritorial exertion of their corporate powers regarding proprietary projects such as the instant one, the areas in which those powers were applied were limited to locales adjacent to and contiguous with the cities' boundaries. Moreover, the extraterritorial application of municipal power was approved where: it was necessary or imperative for the protection of the public health of the residents of the city (*State v. City of Pensacola,*

197 So. 520 (Fla. 1940)); existing private facilities were inadequate for present needs of city residents and those facilities of contiguous entities were inadequate (*State v. City of Melbourne*, 93 So.2d 371 (Fla. 1957)); or there was an urgent need for water, and alternative sources necessary to serve residents of the city were inadequate (*State v. City of Cocoa*, 92 So.2d 537 (Fla. 1957), *Town of Riviera Beach v. State*, 53 So.2d 828 (Fla. 1951)).

42. The foregoing equitable and legal considerations establish that Defendants would exceed their authority by unilaterally asserting extraterritorial jurisdiction over the assets involved here.

43. Finally, the Cities cannot attempt to do together under Fla. Stat. ch. 163 what neither of them can do separately, *i.e.*, acquire utility facilities outside their municipal boundaries. Part I of Chapter 163 is the Florida Interlocal Cooperation Act. The purpose of this Act is to allow local governments to make the most efficient use of their common powers by enabling them to cooperate with other local governments to provide services and facilities through interlocal agreement. *See* Fla. Stat. ch. 163.01(2).

44. The Act authorizes local governments to exercise jointly "any power, privilege, or authority which such agencies share in common and which each might exercise separately." *See* Fla. Stat. ch. 163.01(4) (emphasis added). Fla. Stat. ch.

163.01(7)(g) authorizes the formation of utility authorities that may issue debt to acquire, own, construct, improve, operate, and manage public facilities, including water and wastewater facilities. Fla. Stat. ch. 163.01(7)(g)1. This statutory section attempts to empower these utility authorities to "serve populations within or outside of the members of the entity." *Id.* However, this section also provides that any utility authority created under this statute is bound by the terms of Fla. Stat. ch. 125.01 relating to counties and 166.021 relating to municipalities. *Id.* Accordingly, a utility authority, such as the FWSA, which is composed of municipal entities is bound by the extraterritorial authority limitation of the Florida Constitution, as recognized in Fla. Stat. ch. 166.021.

45. In addition, the Cities of Milton and Gulf Breeze jointly and singly lack sufficient authority to acquire utility facilities across the State of Florida when the closest facility is more than 100 miles away from both cities. Language in Fla. Stat. ch. 163.01(7)(g)1 states that any separate utility authority may serve populations within or outside of the member entities. However, given the overall structure of the Florida Interlocal Cooperation Act and its focus on local cooperation to provide services based on "mutual advantage" to the local communities, the Florida Legislature did not intend for these utility authorities to operate in the manner of the FWSA. Reading Fla. Stat. ch. 163, Part I as a whole, common sense compels the

conclusion that the primary purpose of any utility authority created under Fla. Stat. ch. 163.01(7)(g) is to serve some populations within the boundaries of the authority members, and that the ability to serve populations outside the members' boundaries is merely a collateral and incidental right. Moreover, even if Fla. Stat. ch. 163.01(7)(g)1 is sufficient legislative authorization for the attempted purchase by the FWSA of Florida Water Services' assets, the requisite public purpose, as explained in *City of Riviera Beach, supra*, 397 So.2d at 685, cannot be demonstrated under the present facts.

46. Additionally, while the courts have not decided the issue of whether consent is necessary absent a specific statutory provision, such consent is a predicate to the extension of water and sewer facilities into an adjacent or remote local government. The home rule provisions of the Florida Constitution grant each county and city government all the powers of local self-government, including the power to provide necessary water and wastewater utility services to its inhabitants. *See* Fla. Stat. chs. 125.01(1)(k)(1), 166.021, and 180.02. To reconcile the specific authority granted to each county and municipality to provide public utilities within its jurisdiction with the competing proprietary power of local governments to engage in utility activities, consent of the local government with jurisdiction over the area is necessary prior to intrusion by another government. *See Town of Palm Beach v. City*

of West Palm Beach, 239 So. 2d 835, 838 (Fla. 4th DCA 1970) (noting with approval the commentary in McQuillin, *Municipal Corporations*, that "unless authorized by statute a municipal corporation cannot extend its sewers into the territory of another municipality without its consent"). Any other interpretation would frustrate the very essence of home rule and nullifies the purpose of the Florida Interlocal Cooperation Act of 1969, Fla. Stat. ch. 163.01. For the foregoing reasons, the Defendants' attempt to exert extraterritorial authority over Florida Water systems is unlawful and must fail.

D. The Payment To Florida Water Of $36 Million In Capital Charges Violates Florida Law

47. Defendants grossly mischaracterize the foundation of Count III of Osceola County's complaint. The County does not challenge the statutory authorization or ability of a legitimate authority created pursuant to Fla. Stat. ch. 163 to issue bonds to generate funds for facility construction. Instead, Osceola County challenges the FWSA's proposed use of Capital Charges paid by future customers as they connect to the Florida Water system. The proposed acquisition agreement would exclude $36 million of Capital Charges paid by future customers from assets being acquired by the FWSA. In this way, Florida Water is permitted to keep $36 million of Capital Charges as additional payment for the utility system.

48. Defendants allege that the acquisition agreement attached as Exhibit C to the County's complaint was not an accurate representation of the agreement between FWSA and Florida Water. The agreement attached to the Complaint was the agreement filed by Allete, Inc., Florida Water's parent company, with the Securities and Exchange Commission on September 20, 2002. As such, Osceola County is entitled to assume that such Agreement is an accurate representation of the Agreement approved by the parties. Moreover, review of the pertinent section 2.2(b) of the Agreement as filed with the SEC and section 2.2(b) of the Agreement actually signed by FWSA and Florida Water and dated as of September 19, 2002, a copy of which is attached as Exhibit A hereto, reveals that the language in section 2.2(b) and all other sections pertinent to Capital Charges are identical. For these reasons, it is disingenuous for Defendants to represent to this Court that, "The Defendants have not entered an agreement as Plaintiff represents."

49. Defendants suggest that this language has been amended by the parties in such a way that the County's cause of action is moot and should be dismissed (Motion to Dismiss at para. 26). Defendants do not present this Court with a copy of the alleged amended agreement and have not presented Osceola County with a copy of such alleged amended agreement.

50. However, attached as Exhibit B hereto is a copy of a draft "Amendment and Restatement of Asset Purchase Agreement by and between Florida Water Services Corporation and Florida Water Services Authority Dated as of December 21, 2002" (the "Draft Amendment"). Unless this amended agreement was executed by FWSA without public notice and hearing, it remains unsigned and is therefore of no effect. Therefore, Defendants' allegations that the County's Count III may be dismissed as moot because the acquisition agreement signed on September 19, 2002, has been amended is misplaced.

51. In addition, the Defendants' attempt to restructure the interval and process by which Florida Water is to receive $36 million of Capital Charges, as revealed in section 2.2(b) and section 1.1 of the Draft Amendment under the definition of "Maximum Annual Retainage," even if the Draft Amendment were executed, does not change the substantive legal issue raised by Osceola County.

52. The Capital Charges at issue, when collected by local governments, are commonly referred to as impact fees or capacity charges. Capital Charges are imposed against new development to provide for the cost of capital facilities made necessary by that growth. For example, in *City of Dunedin v. Contractors and Builders Association of Pinellas County*, 312 So. 2d 763 (Fla. 2nd DCA 1975), the court stated, "Where a city's water and sewer facilities would be adequate to serve its

present inhabitants were it not for drastic growth, it seems unfair to make the existing inhabitants pay for new systems when they have already been paying for the old ones." 312 So.2d at 766; *see also Hollywood, Inc., supra*, 431 So. 2d at 606.

53. Defendants continue to allege in the Draft Amendment that the FWSA is permitting Florida Water to retain $36 million of Capital Charges as compensation for excess capacity in the Florida Water system (Exhibit B, Draft Amendment, section 2.2(b)). However, Defendants do not even attempt to refute the fact that $44 million of facility expansions are required by FWSA in the first three years after the proposed acquisition and additional investment in facility expansions is required to be made by FWSA in the fourth and fifth years after acquisition. The substantive legal issue remains and is not mooted by Defendants' agreement to reduce the Capital Charges retained by Florida Water the first three years and permit Florida Water's additional retention of Capital Charges beyond the third year such that Florida Water shall continue to collect $36 million.

54. Florida courts apply a two prong test when considering whether a Capital Charge may be collected by a government-owned utility and whether a fee being charged is reasonable. First, Capital Charges are valid when a reasonable connection, or rational nexus, exists between the anticipated need for additional capital facilities and the growth in customers served. Second, Capital Charges are valid when a

reasonable connection, or rational nexus, exists between the expenditure of the Capital Charges and the benefits accruing to the new customers from such proceeds. *Hollywood, Inc.*, 431 So. 2d at 611-12. The FWSA's intention to use $36 million of Capital Charges to be paid by future customers of FWSA to add to the cash purchase price to be paid by FWSA to Florida Water violates the second facet of this test.

55. By permitting Florida Water to retain the $36 million in Capital Charges, the FWSA must look to other sources to replace such funds to finance the necessary facility expansions. The FWSA must replace the funds by issuing additional bonds or using monthly service fee revenue. In either case, both existing and new customers who have paid the Capital Charges will be required to pay more to FWSA than if the Capital Charges were used by FWSA to pay for facility expansions, as required by law. Appropriate use of the Capital Charges would prevent existing customers from being burdened by higher debt service requirements associated with the larger bond amounts and monthly service revenue would remain available to the FWSA for other purposes, thus providing the potential for increased periods of rate stability or even rate decreases in the future. For these reasons, it would be unlawful for the FWSA to use Capital Charges to pay an additional $36 million to Florida Water.

E. Defendants' Execution Of The Acquisition Agreement Is Void *Ab Initio* Due To Defendants' Myriad Sunshine Law Violations

56. Fla. Const. art. I, § 24(b) mandates that:

> All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the legislature shall be open and noticed as provided in Fla. Const. art. III, § 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.

Fla. Const. art. I, § 24(c) decrees that this section is self-executing. The implementing legislation for these provisions is codified at Fla. Stat. ch. 286.

57. Fla. Stat. ch. 286.011 directs that:

> All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

58. The Sunshine Law was enacted to protect the public from "closed door" politics and, as such, the law must be broadly construed to effect its remedial and protective purpose. *Evergreen the Tree Treasurers of Charlotte County, Inc. v. Charlotte County Bd. of Comm'rs*, 810 So.2d 526 (Fla. 2nd DCA 2002).

59. The Sunshine Law is equally applicable to elected bodies, appointed boards, and advisory boards and applies to any gathering of two or more members of the same board to discuss any matter that may foreseeably come before that board. *See Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 697-98 (Fla. 1969); *see also, Town of Palm Beach v. Gradison*, 296 So. 2d 473, 477 (Fla. 1974). The Sunshine Law even applies to staff members and individual board members who are exercising any decision-making function. *See Wood v. Marsten*, 442 So. 2d 934 (Fla. 1983).

60. Additionally, the Sunshine Law has been broadly construed by Florida courts to apply not only to formal decision making by public bodies, but also to the "collective inquiry and discussion stages." *See Gradison*, 296 So. 2d at 477. One purpose of the Sunshine Law is to "prevent at non-public meetings the crystallization of secret decisions to a point just short of ceremonial acceptance...The statute should be construed so as to frustrate all evasive devices." *See Gradison*, 296 So. 2d at 477. The Sunshine Law is, therefore, applicable to all functions of public boards and commissions, whether at formal or informal meetings, which relate to the affairs and duties of the public body. "[T]he Sunshine Law does not provide that cases be treated differently based upon their level of public importance." *See Monroe County v. Pigeon Key Historical Park, Inc.*, 647 So. 2d 857, 868 (Fla 3rd DCA 1994).

61. Recognizing that the Sunshine Law must be broadly construed so as to "frustrate all evasive devices," the courts have held that actions taken in violation of the Sunshine Law constitute irreparable public injury so that such actions are void *ab initio*. *See Gradison*, 296 So. 2d at 477. A violation of the Sunshine Law does not need to be intentional for all actions to be invalidated. Rather, once a violation is shown, prejudice is presumed. *See Port Everglades Authority v. International Longshoreman's Association*, 652 So. 2d 1169, 1171 (Fla. 4th DCA 1995).

62. For example, in *Gradison, supra*, 296 So.2d at 473, a citizen's committee which met at nonpublic meetings formulated a comprehensive zoning plan for the town. Later, the town council perfunctorily adopted the substantially same plan as a zoning ordinance at a public meeting. Despite a finding by the court that the town council had acted in good faith and with no intent to circumvent the Sunshine law, the court found that the zoning ordinance was void *ab initio* because of the non-public activities of the citizens planning committee. *See Gradison*, 296 So. 2d at 478.

63. Here, the parade of correspondence, informal meetings, and piecemeal negotiations in which the Defendants and their committee of representatives and advisors participated both with Florida Water and among themselves constituted violations of the Sunshine Law. *Op. Atty. Gen. 90-17* (1990)(where a council member was authorized, formally or informally, to meet with a private corporation

and could exercise decisional authority on behalf of the Council, the meeting had to be open to the public); *Op. Atty. Gen. 94-21* (1994)(Council-authorized negotiating team whose efforts culminated in a finalized and approved agreement had to conduct all meetings in the Sunshine); *Inf. Op. to Evans*, (7 June 1989)(Council should postpone taking action on items controversial or of critical public concern until they have been properly noticed).

64. Under Fla. Stat. ch. 286.011, Osceola County and its residents were entitled to reasonable notice of the meetings conducted by Gulf Breeze, Milton, and the FWSA or their respective advisors. What constitutes reasonable notice is a case- and fact-specific determination, but it must suffice to apprize the public of the pendency of matters that might affect their rights, afford them the opportunity to appear and present their views, and afford them a reasonable time to make an appearance if they wished. *Lyon v. Lake County*, 765 So.2d 785 (Fla. 5th DCA 2000).

65. Here, Defendants' conduct did not come close to satisfying the reasonable notice obligations that the law imposed upon them. Despite Defendants' knowledge that their proposed actions carried adverse consequences for 500-mile distant Osceola County and its more than 172,000 residents, Defendants and their representatives affirmatively decided not to publicize notices of their hearings outside of Santa Rosa County. Emblematic is an e-mail sent by Richard Lott, Esq., the

attorney for FWSA, to Matt Dannheisser, Esq., attorney for the City of Gulf Breeze dated 5 September 2002, a copy of which is attached as Exhibit C hereto, regarding the public notice of a hearing to be held by the City of Gulf Breeze. In this correspondence, Mr. Lott states:

> Can you run the ad? I hope we do not have to mention specifically that we are acquiring the "Florida Water Service Company" assets in the ad.

Indeed, the extent of Defendants' *de minimis* notice efforts was to publish in the 16 September 2002 edition of the *Pensacola News Journal* notices of the several hearings contested herein. Defendants used no broadcast media in any jurisdiction to publicize the meetings where the creation of the FWSA or the half-a-billion dollar acquisition of Florida Water would be discussed.

66. Inexplicably, the FWSA's first public meeting, conducted on 19 September 2002, was held in Escambia County at Pensacola Junior College. The only attendees at that meeting were the financiers, lawyers, city officials, and FWSA officers who were responsible for and would profit from approval of the deal.

67. Defendant Council Members signed an interlocal agreement creating the FWSA and, within a matter of two days, committed the FWSA to an agreement to purchase the largest private water and wastewater utility in the State of Florida. Defendants and their advisors effectively shielded the collective inquiry and

discussion stages of the FWSA's creation and acquisition of Florida Water from public scrutiny until their collective secret decisions had been realized. Defendants, through their advisors, further intentionally prosecuted their campaign without notice to the County or its residents. It is no small irony that Defendants invoke provisions of the Florida Interlocal Cooperation Act (Fla. Stat. ch. 163) as authority for the proposed acquisition, while Defendants' advisors who structured the FWSA and the terms of the acquisition agreement affirmatively took steps to ensure that interested parties received no advance notice of their activities with the knowledge that no such cooperation would be forthcoming from such parties.

68. In sum, no dismissal is in order here. As the facts and the law applicable to them make incontrovertible, Osceola County's Complaint lays several causes of action requiring this Court's intercession to resolve. Specifically, Defendant Council Members acted unlawfully in their attempt to commit their respective cities to FWSA membership, and that effort was void *ab initio*. Concomitantly, Defendant FWSA members' conduct of the FWSA's business in violation of the Sunshine Law was equally effective in vitiating the FWSA's purported approval of the acquisition agreement with Florida Water.

WHEREFORE, Osceola County respectfully requests that this Court deny Defendants' Motion to Dismiss.

Respectfully submitted this 16th day of January, 2003.

JO O. THACKER
COUNTY ATTORNEY

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CERTIFICATE OF SERVICE

I, Derek Phillips, certify that on 16 January 2003 a copy of the foregoing has been furnished by first class U.S. mail to:

Bruce Culpepper, Esq.
James Bruce Culpepper, Esq.
Charles F. Ketchey Jr., Esq.
C/O Akerman Senterfitt
301 South Bronough Street, Suite 200
Post Office Box 10555
Tallahassee, Florida 32302-2555

DEREK PHILLIPS

5 signed

ASSET PURCHASE AGREEMENT

by and between

FLORIDA WATER SERVICES CORPORATION

and

FLORIDA WATER SERVICES AUTHORITY

Dated as of September 19, 2002

EXHIBIT "A"

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement ("Agreement") is dated as of September ____, 2002, by and between Florida Water Services Authority, a public entity of the State of Florida ("Buyer"), and Florida Water Services Corporation, a Florida corporation ("Seller").

RECITALS

WHEREAS, Seller owns potable water production, supply, treatment, and distribution systems, alternative water systems, wastewater collection, transmission, treatment and disposal systems, and reclaimed water facilities in various incorporated and unincorporated areas in Florida (the "System," as hereinafter defined); and

WHEREAS, Buyer, pursuant to Chapter 163, Florida Statutes, and the Interlocal Agreement dated as of September 16, 2002, creating Buyer (the "Interlocal Agreement") and other applicable laws, has the power and authority to acquire and provide potable water, wastewater, and reclaimed water facilities and to provide service outside of the boundaries of its participating members; and

WHEREAS, various governmental entities have threatened to condemn portions of System of the Seller, including portions of the water, wastewater and reclaimed water utility Facilities of the Seller, and in lieu of condemnation, Buyer desires to acquire all or substantially all of the assets which are used by Seller in providing services through the water, wastewater and reclaimed water Facilities throughout the State of Florida, and to avoid condemnation, Seller has consented to sell those assets to Buyer; and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, the Assets of Seller for the consideration and on the terms and subject to the conditions set forth in this Agreement;

Now therefore, the parties, intending to be legally bound, agree as follows:

1. Definitions and Usage

1.1 Definitions

For purposes of this Agreement, the following terms and variations thereof have the meanings specified or referred to in this Section 1.1:

"Accounts Receivable"– (a) all customer accounts receivable and other rights to payment from customers of Seller and the full benefit of all security for such accounts or rights to payment; (b) all other accounts or notes receivable of Seller and the full benefit

of all security for such accounts or notes; and (c) any claim, remedy or other right related to any of the foregoing.

"Acquisition Bonds"-- means Bonds issued by the Buyer primarily for the purpose of paying the Purchase Price or installments thereof and anticipated to be in an aggregate amount sufficient to produce Acquisition Bond Net Proceeds in an amount equal to the Purchase Price.

"Acquisition Bonds Net Proceeds' -- means the amount received from the sale of the Acquisition Bonds less all the costs of issuing the Bonds, establishing any required reserves, deducting $29 Million (for the purpose of funding Remedial Capital Projects although it is not required that it be so used), deducting $15,800,000 (for the purpose of funding future capital improvements to the System although it is not required to be so used), deducting an amount for the working capital needs of the Buyer and deducting the costs incurred by the Buyer in connection with the transactions contemplated by this Agreement. In the event that Bonds are issued at more than one time, the above mentioned $44,800,000 will be deducted from the initial Bond issue in order to determine the Acquisition Bond Net Proceeds.

"Appurtenances"-- all privileges, rights, easements, hereditaments and appurtenances belonging to or for the benefit of the Land, including all easements appurtenant to and for the benefit of any Land (a "Dominant Parcel") for, and as the primary means of access between, the Dominant Parcel and a public way, or for any other use upon which lawful use of the Dominant Parcel for the purposes for which it is presently being used is dependent, and all rights existing in and to any streets, alleys, passages and other rights-of-way included thereon or adjacent thereto (before or after vacation thereof) and vaults beneath any such streets.

"Assets" or "Assets to Be Sold"-- as defined in Section 2.1.

"Assignment and Assumption Agreement"-- as defined in Section 2.7(a)(ii).

"Assumed Liabilities"-- as defined in Section 2.4(a).

"Best Efforts"-- the efforts that a prudent Person desirous of achieving a result would use in similar circumstances to achieve that result as expeditiously as possible, provided, however, that a Person required to use Best Efforts under this Agreement will not be thereby required to take actions that would result in a material adverse change in the benefits to such Person of this Agreement and the Contemplated Transactions or to dispose of or make any change to its business, expend any material funds or incur any other material burden.

"Bill of Sale"-- as defined in Section 2.7(a)(i).

"Bonds" shall mean revenue bonds, the interest on which (i) accrues at fixed rates and (ii) is excluded from gross income of the holder thereof for federal income tax purposes, to be issued by the Buyer and payable solely from and secured solely by the Net Revenues of the System and, if consented to by Buyer, other assets of the Buyer.

"Bond Insurer"—any nationally recognized financial institution or insurer of principal and interest on bonds of state and local governments whose bond purchase agreement, letter or line of credit, surety bond, insurance policy or guaranty would result in such bonds being rated in one of the highest two categories by Standard & Poor's or Moody's.

"Breach"-- any breach of, or any inaccuracy in, any representation or warranty or any breach of, or a failure to perform or comply with, any covenant or obligation, in or of this Agreement.

"Business Day"-- any day other than: (a) Saturday or Sunday; or (b) any other day on which banks in Florida are permitted or required to be closed.

"Buyer"-- as defined in the first paragraph of this Agreement.

"Buyer Indemnified Persons"-- as defined in Section 11.2.

"Capital Charges"- revenues, exclusive of Special Assessments, derived by the Buyer from impact fees, guaranteed revenues, service availability fees, or other such fees or charges, imposed upon landowners, builders or developers in connection with the Buyer improvement of property within the services areas of the System, to defray the costs of capital facilities.

"Capital Improvement Plan Requirement"— an annual amount of $25,000,000 for the purpose of providing extraordinary maintenance, rehabilitation, upgrades to equipment or facilities, increased plant capacity, and extensions and enlargements to the System, and excluding well and septic tank conversions.

"Closing"-- as defined in Section 2.6.

"Closing Date"-- the date on which the Closing actually takes place.

"COBRA"-- as defined under Federal Employment Law.

"Code"-- the Internal Revenue Code of 1986.

"Confidential Information"-- as defined in Section 12.1.

"Contemplated Transactions"-- all of the transactions contemplated by this Agreement.

"Cost of Operation and Maintenance"-- all current expenses, paid or accrued, for the operation, maintenance and repair of all Facilities of the System, as calculated in accordance with generally accepted accounting principles for units of local government and on a consistent basis with the operation and maintenance and repair of the Facilities of the System under Seller's ownership, and shall include, without limiting the generality of the foregoing, insurance premiums, administrative expenses of the Buyer related solely to the System, labor, cost of materials, consumables and supplies used for current operation, but excluding any reserve for renewals or replacements, any extraordinary or emergency repairs, any replacements, any capital expenditures, any allowance for interest or depreciation or amortization, any other non-cash item, any profit, any franchise fees, any payments in lieu of taxes, and any voluntary payments to other governmental entities not required by law.

"Customer Deposits"—any amounts deposited with or held by the Seller as customer deposits.

"Damages"-- as defined in Section 11.2.

"Due Diligence Expenses"— a sum up to $200,000 or such greater amount as the Seller may approve in writing, to reimburse the costs incurred by the Buyer for its due diligence expenses in making the decision to acquire the System and issue the Acquisition Bonds for the Purchase Price.

"Effective Time"-- 12:01 am. on the Closing Date.

"Employee Plans"-- as defined in Section 3.13.

"Employment Agreement"-- as defined in Section 2.7(a)(vi).

"Encumbrance"-- any charge, claim, community or other marital property interest, condition, equitable interest, lien, option, pledge, security interest, mortgage, right of way, easement, encroachment, servitude, right of first option, right of first refusal or similar restriction, including any restriction on use, voting (in the case of any security or equity interest), transfer, receipt of income or exercise of any other attribute of ownership.

"Environment"-- soil, land surface or subsurface strata, surface waters (including navigable waters and ocean waters), ground waters, drinking water supply, stream sediments, ambient air (including indoor air), plant and animal life and any other environmental medium or natural resource.

"Environmental, Health and Safety Liabilities"-- any cost, damages, expense, liability, obligation or other responsibility arising from or under any Environmental Law or Occupational Safety and Health Law, including those consisting of or relating to:

(a) any environmental, health or safety matter or condition (including on-site or off-site contamination, occupational safety and health and regulation of any chemical substance or product);

(b) any fine, penalty, judgment, award, settlement, legal or administrative proceeding, damages, loss, claim, demand or response, remedial or inspection cost or expense arising under any Environmental Law or Occupational Safety and Health Law;

(c) financial responsibility under any Environmental Law or Occupational Safety and Health Law for cleanup costs or corrective action, including any cleanup, removal, containment or other remediation or response actions ("Cleanup") required by any Environmental Law or Occupational Safety and Health Law (whether or not such Cleanup has been required or requested by any Governmental Body or any other Person) and for any natural resource damages; or

(d) any other compliance, corrective or remedial measure required under any Environmental Law or Occupational Safety and Health Law.

The terms "removal," "remedial" and "response action" include the types of activities covered by the United States Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

"Environmental Law"-- any Legal Requirement that requires or relates to:

(a) advising appropriate authorities, employees or the public of intended or actual Releases of pollutants or hazardous substances or materials, violations of discharge limits or other prohibitions and the commencement of activities, such as resource extraction or construction, that could have significant impact on the Environment;

(b) preventing or reducing to acceptable levels the Release of pollutants or hazardous substances or materials into the Environment;

(c) reducing the quantities, preventing the Release or minimizing the hazardous characteristics of wastes that are generated;

(d) assuring that products are designed, formulated, packaged and used so that they do not present unreasonable risks to human health or the Environment when used or disposed of;

(e) protecting resources, species or ecological amenities;

(f) reducing to acceptable levels the risks inherent in the transportation of hazardous substances, pollutants, oil or other potentially harmful substances;

(g) cleaning up pollutants that have been Released, preventing the Threat of Release or paying the costs of such clean up or prevention; or

(h) making responsible parties pay private parties, or groups of them, for damages done to their health or the Environment or permitting self-appointed representatives of the public interest to recover for injuries done to public assets.

"ERISA"-- the Employee Retirement Income Security Act of 1974.

"Exchange Act"-- the Securities Exchange Act of 1934.

"Excluded Assets"-- as defined in Section 2.2.

"Facilities"-- the Land, leasehold, license, easement, right-of-way, prescriptive claim or other interest in real property currently owned or operated by Seller or used by the Seller in the operation of the System, including the Tangible Personal Property used or operated by Seller at the respective locations of the Land, and excluding the Excluded Assets.

"GAAP"-- generally accepted accounting principles applicable to the Seller for financial reporting in the United States, applied on a basis consistent with the basis on which the balance sheets and the other financial statements referred to in Section 3.3 were prepared.

"Governing Documents"-- the articles or certificate of incorporation and the bylaws of Sellers.

"Governmental Authorization"-- any consent, license, registration or permit issued, granted, given or otherwise made available by or under the authority of any Governmental Body or pursuant to any Legal Requirement.

"Governmental Body"-- any:

(a) federal, state, local, municipal, or other government;

(b) governmental authority of any nature (including any agency, branch, department, board, commission, court, tribunal or other entity exercising governmental powers); or

(c) body exercising any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power.

"Gross Revenues" or "Revenues" shall mean all moneys, received or receivable by the Buyer, or accruing to it in the operation of the System, from rates, fees, rentals, or other charges for the services or Facilities of the System, excluding state and federal grants and grants in aid of construction, unless otherwise provided herein, all calculated in accordance with generally accepted accounting practice applicable to a local government. "Gross Revenues" or "Revenues" shall also be deemed to include any amounts (exclusive of Capital Charges retained by Seller) received by the Buyer as Capital Charges for any facilities acquired from the Seller, but shall not include Special Assessments or Capital Charges for any facilities not purchased from the Seller.

"Hazardous Activity"-- the distribution, generation, handling, importing, management, manufacturing, processing, production, refinement, Release, storage, transfer, transportation, treatment or use (including any withdrawal or other use of groundwater) of Hazardous Material in, on, under, about or from any of the Facilities or any part thereof into the Environment and any other act, business, operation or thing that increases the danger, or risk of danger, or poses an unreasonable risk of harm, to persons or property on or off the Facilities.

"Hazardous Material"-- any substance, material or waste which is or will foreseeably be regulated by any Governmental Body, including any material, substance or waste which is defined as a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "contaminant," "toxic waste" or "toxic substance" under any provision of Environmental Law, and including petroleum, petroleum products, asbestos, presumed asbestos-containing material or asbestos-containing material, urea formaldehyde and polychlorinated biphenyls.

"Improvements"-- all buildings, structures, fixtures and improvements located on the Land or included in the Assets, including those under construction.

"Indemnified Person"-- as defined in Section 11.9.

"Indemnifying Person"-- as defined in Section 11.9.

"Intellectual Property Assets"-- as defined in Section 3.14.

"Inventories"-- all inventories of Seller, wherever located, including without limitation, all pumps, pipes, valves, plumbing fixtures, chemicals, stored water, spare parts and all other materials and supplies to be used by Seller in the operation of its business.

"IRS"-- the United States Internal Revenue Service and, to the extent relevant, the United States Department of the Treasury.

"Land"-- all parcels and tracts of land in which Seller has a fee ownership interest, except for the parcels and tracts of land set forth in Exhibit 2.2.

"Lease"-- any Real Property Lease or any lease or rental agreement, license, right to use or installment and conditional sale agreement to which Seller is a party and any other Seller Contract pertaining to the leasing or use of any Tangible Personal Property.

"Legal Requirement"-- any federal, state, local, municipal, or other constitution, law, ordinance, principle of common law, code, regulation, or statute.

"Liability"-- with respect to any Person, any liability or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person.

"Material Consents"-- as defined in Section 7.3.

"Maximum Annual Retainage" -- means the sum $12 Million annually.

"Maximum Cumulative Retainage"-- the sum of $36 Million annually.

"Net Revenues" shall mean Gross Revenues less the Cost of Operation and Maintenance.

"Occupational Safety and Health Law"-- any Legal Requirement designed to provide safe and healthful working conditions and to reduce occupational safety and health hazards under the Occupational Safety and Health Act.

"Order"-- any order, injunction, judgment, decree, ruling, assessment or arbitration award of any Governmental Body or arbitrator.

"Ordinary Course of Business"-- an action taken by a Person will be deemed to have been taken in the Ordinary Course of Business only if that action is consistent in nature, scope and magnitude with the past practices of such Person and is taken in the ordinary course of the normal, day-to-day operations of such Person.

"Permitted Encumbrances"-- as defined in Section 3.7.

"Person"-- an individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a Governmental Body.

"Proceeding"-- any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, judicial or investigative, whether formal or informal, whether public or private) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Body or arbitrator.

"Purchase Price"-- as defined in Section 2.3.

"Real Property"-- the Land and Improvements.

"Real Property Lease"-- any ground lease or space lease.

"Record"-- information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"Related Person"-- (a) any Person that directly or indirectly controls, is directly or indirectly controlled by or is directly or indirectly under common control with such specified Person;

(b) any Person that holds a Material Interest in such specified Person;

(c) each Person that serves as a director, officer, partner, executor or trustee of such specified Person (or in a similar capacity);

(d) any Person in which such specified Person holds a Material Interest; and

(e) any Person with respect to which such specified Person serves as a general partner or a trustee (or in a similar capacity).

For purposes of this definition, (a) "control" (including "controlling," "controlled by," and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and shall be construed as such term is used in the rules promulgated under the Securities Act; (b) the "Family" of an individual includes (i) the individual, (ii) the individual's spouse, (iii) any other natural person who is related to the individual or the individual's spouse within the second degree and (iv) any other natural person who resides with such individual; and (c) "Material Interest" means direct or indirect beneficial ownership (as defined in Rule 13d-3 under the Exchange Act) of voting securities or other voting interests representing at least ten percent (10%) of the outstanding voting power of a Person or equity securities or other equity interests representing at least ten percent (10%) of the outstanding equity securities or equity interests in a Person.

"Release"-- any release, spill, emission, leaking, pumping, pouring, dumping, emptying, injection, deposit, disposal, discharge, dispersal, leaching or migration on or into the Environment or into or out of any property.

"Remedial Action"-- all actions, including any capital expenditures, required: (a) to clean up, remove, treat or in any other way address any Hazardous Material or other substance; (b) to prevent the Release or Threat of Release or to minimize the further Release of any Hazardous Material or other substance so it does not migrate or endanger or threaten to endanger public health or welfare or the Environment; (c) to perform pre-remedial studies and investigations or post-remedial monitoring and care; or (d) to bring all Facilities and the operations conducted thereon into compliance with Environmental Laws and environmental Governmental Authorizations.

"Remedial Capital Projects"— capital projects needed to serve existing customers as of the date of Closing that are necessary (i) to repair or replace Facilities that are defective, inoperative, or failing, (ii) to improve or repair the Facilities to the extent that the Facilities are not performing their intended functions in a commercially reasonable and efficient manner, (iii) to replace or improve the Facilities in order to cure any violations of any Governmental Authorizations; and (iv) to perform extraordinary maintenance or deferred maintenance that is necessary to enable the Facilities to perform their intended functions. Remedial Capital Projects shall not include any expansion related capital improvements, normal maintenance or renewal and replacement items normally incurred in the Ordinary Course of Business. Buyer shall have twelve (12) months from the date of Closing to investigate and determine the extent of Remedial Capital Projects existing as of the date of Closing, if any, which determination shall be consistent with prevailing utility industry maintenance practices. On or before the first anniversary of execution of this Agreement, Buyer shall notify Seller in writing of the specific projects and estimated cost for each Remedial Capital Project. Disputes, if any shall be resolved in accordance with Section 13.5.

"Remedial Capital Projects Amount"— an amount sufficient to enable the Buyer to fund all required Remedial Capital Projects for the System as it existed as of the date of the Closing, which amount shall be in excess of the aggregate amount of $29 Million funded for capital improvements as part of the Acquisition Bonds plus the Capital Improvement Plan Requirement for five years and the Renewal and Replacement Requirement for five years.

"Renewal and Replacement Requirement"—an annual amount equal to $5,000,000 to be used for the purpose of paying the cost of renewals, upgrades, enhancements, or the replacement of capital assets of the System and extraordinary and emergency repairs thereto.

"Representative"-- with respect to a particular Person, any director, officer, manager, employee, agent, consultant, advisor, accountant, financial advisor, legal counsel or other representative of that Person.

"Retained Liabilities"-- as defined in Section 2.4(b).

"Seller"-- as defined in the first paragraph of this Agreement.

"Seller Contract"-- any contract, promise, or undertaking: (a) under which Seller has or may acquire any rights or benefits; (b) under which Seller has or may become subject to any obligation or liability; or (c) by which Seller or any of the assets owned or used by Seller is or may become bound or are encumbered.

"Special Assessments" shall mean revenues derived by the Buyer from special assessments imposed upon benefited property in connection with post-Closing acquisition or construction of additions, extensions or improvements to the System.

"Subsidiary"-- with respect to any Person (the "Owner"), any corporation or other Person of which securities or other interests having the power to elect a majority of that corporation's or other Person's board of directors or similar governing body, or otherwise having the power to direct the business and policies of that corporation or other Person (other than securities or other interests having such power only upon the happening of a contingency that has not occurred), are held by the Owner or one or more of its Subsidiaries.

"System" -- shall mean the complete combined and consolidated water, sewer and reclaimed water utility systems of the Seller together with any and all assets, improvements, extensions and additions thereto hereafter constructed or acquired, but not including the Excluded Assets.

"Tangible Personal Property"-- all machinery, equipment, tools, furniture, office equipment, computer hardware, supplies, materials, vehicles and other items of tangible personal property (other than Inventories) of every kind owned or leased by Seller (wherever located and whether or not carried on Seller's books), together with any express or implied warranty by the manufacturers or sellers or lessors of any item or component part thereof and all maintenance records and other documents relating thereto.

"Tax"-- any income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, property, environmental, windfall profit, customs, vehicle, airplane, boat, vessel or other title or registration, capital stock, franchise, employees' income withholding, foreign or domestic withholding, social security, unemployment, disability, real property, personal property, sales, use, transfer, value added, alternative, add-on minimum and other tax, fee, assessment, levy, tariff, charge or duty of any kind whatsoever and any interest, penalty, addition or additional

amount thereon imposed, assessed or collected by or under the authority of any Governmental Body or payable under any tax-sharing agreement or any other contract.

"Tax Return"-- any return (including any information return), report, statement, schedule, notice, form, declaration, claim for refund or other document or information filed with or submitted to, or required to be filed with or submitted to, any Governmental Body in connection with the determination, assessment, collection or payment of any Tax or in connection with the administration, implementation or enforcement of or compliance with any Legal Requirement relating to any Tax.

"Third Party"-- a Person that is not a party to this Agreement.

"Third-Party Claim"-- any claim against any Indemnified Person by a Third Party, whether or not involving a Proceeding.

"Threat of Release"-- a reasonable likelihood of a Release that may require action in order to prevent or mitigate damage to the Environment that may result from such Release.

"Unbilled Customer Revenue" – revenue for services provided to customers that have not yet been billed as of the date of Closing, calculated on a basis consistent with Seller's current billing practices.

1.2 Usage

(a) Interpretation. In this Agreement, unless a clear contrary intention appears:

(i) the singular number includes the plural number and vice versa;

(ii) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are not prohibited by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;

(iii) reference to any gender includes each other gender;

(iv) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;

(v) "hereunder," "hereof," "hereto," and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article, Section or other provision hereof;

(vi) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term;

(vii) with respect to the determination of any period of time, "from" means "from and including" and "to" means "to but excluding"; and

(viii) references to documents, instruments or agreements shall be deemed to refer as well to all addenda, exhibits, schedules or amendments thereto.

(b) Accounting Terms and Determinations. Unless otherwise specified herein, all accounting terms used herein shall be interpreted and all accounting determinations hereunder shall be made in accordance with GAAP, as the same applies to the Seller, and in accordance with generally accepted accounting principles applicable to units of local government, as the same applies to the Buyer.

(c) Legal Representation of the Parties. This Agreement was negotiated by the parties with the benefit of legal representation, and any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any party shall not apply to any construction or interpretation hereof.

2. Sale and Transfer of Assets; Closing

2.1 Assets To Be Sold

Upon the terms and subject to the conditions set forth in this Agreement, at the Closing, but effective as of the Effective Time, Seller shall sell, convey, assign, transfer and deliver to Buyer, and Buyer shall purchase and acquire from Seller, free and clear of any Encumbrances (except as to Appurtenances to the extent provided for elsewhere herein) other than Permitted Encumbrances, all of Seller's right, title and interest in and to all of Seller's property and assets, real, personal or mixed, tangible and intangible, of every kind and description, wherever located, including the following (but excluding the Excluded Assets):

(a) all Real Property and all Appurtenances;

(b) all Tangible Personal Property;

(c) all Inventories;

(d) all Accounts Receivable and Unbilled Customer Revenue;

(e) all Seller Contracts and all outstanding offers or solicitations made by or to Seller to enter into any Contract;

(f) all Governmental Authorizations and all pending applications therefor or renewals thereof, in each case to the extent transferable to Buyer;

(g) all data and Records related to the operations of Seller, including client and customer lists and Records, all personnel records (provided that Seller shall have reasonable access thereto) referral sources, research and development reports and Records, production reports and Records, service and warranty Records, equipment logs, operating guides and manuals, financial and accounting Records, creative materials, advertising materials, promotional materials, studies, reports, correspondence and other similar documents and Records and, subject to Legal Requirements;

(h) all of the intangible rights and property of Seller, including Intellectual Property assets, the trade name, "Florida Water Services", going concern value, goodwill, telephone, telecopy and e-mail addresses and listings;

(i) all claims of Seller against third parties relating to the Assets, whether choate or inchoate, known or unknown, contingent or non-contingent; and

(j) all rights of Seller relating to deposits and prepaid expenses, claims for refunds and rights to offset in respect thereof and that are not excluded under Section 2.2, and not including Seller letters of credit for which the Seller is an applicant.

All of the property and assets to be transferred to Buyer hereunder are herein referred to collectively as the "Assets" or "Assets to be Sold".

2.2 Excluded Assets

Notwithstanding anything to the contrary contained in Section 2.1 or elsewhere in this Agreement, the following assets of Seller (collectively, the "Excluded Assets") are not part of the sale and purchase contemplated hereunder, are excluded from the Assets and shall remain the property of Seller after the Closing:

(a) all cash, cash equivalents and short-term investments; all payments (other than Customer Deposits) received by Seller prior to Closing;

(b) Capital Charges received after the Closing by Buyer which shall be remitted to Seller in each one-year period following the date of the Closing, provided that (i) the total amount of Capital Charges retained by and belonging to Seller for any one such year shall not exceed the Maximum Annual Retainage (and at such time as the total amount of Capital Charges remitted to Seller for any such one year period equals the Maximum Annual Retainage, all further Capital Charges received by the System in such year shall be retained by and belong to the Buyer), and (ii) the aggregate amount retained by the Seller as Excluded Assets pursuant to this subsection 2.2(b) shall be the Maximum Cumulative Retainage and at such time as the total cumulative amount of Capital Charges remitted to Seller under this Section 2.2 equals the Maximum Cumulative

Retainage, no further Capital Charges shall be remitted to the Seller but all such Capital Charges received by the System thereafter be retained by and shall belong to the Buyer. The foregoing Capital Charges retained by Seller are to compensate Seller for the excess capacity existing in the System as of the Effective Date. The amount to be remitted to Seller hereunder by Buyer shall be paid to Seller once a year, commencing 13 months after the Effective Date, for all amount collected during the 12 month period then ended. Seller authorizes Buyer to collect the Capital Charges on behalf of Seller.

(c) all minute books, stock Records and corporate seals;

(d) any shares of capital stock of Seller held in treasury;

(e) Seller's letters of credit outstanding at the date of Closing.;

(f) all insurance policies and rights thereunder (except to the extent specified in Section 2.1(i) and (j));

(g) all of the contracts listed in Exhibit 2.2;

(h) Records that Seller is required by law to retain in its possession;

(i) all claims for refund of Taxes and other governmental charges of whatever nature;

(j) all rights in connection with and assets of any Employee Plans; and

(k) all rights of Seller under this Agreement, the Bill of Sale, the Assignment and Assumption Agreement; and

(l) the property and assets expressly designated in Exhibit 2.2;

2.3 Consideration

(A) Installment Payments. The consideration for the Assets will be four hundred seventy-one million ($471,000,000), as may be adjusted as provided below in subsection 2.3(C) (the "Purchase Price"). The Purchase Price will be payable in Installments delivered by wire transfer from Buyer to Seller as follows:

Date Payable	Installment	Amount Due
At the Closing	Installment 1	$433,000,000
On the third anniversary date of the closing	Installment 2	$38,000,000

(B) Annual Net Revenue Deferral. Seller and Buyer have prepared a pro forma based upon the current Costs of Operation and Maintenance of the System and the

current schedule of rates, fees and charges for the services of the System (without any rate increases, but adjusted for indexing) a copy of which is attached hereto as Exhibit Z.

Based on the pro forma, the parties anticipate that the Buyer will realize Net Revenues in each of the first four 12 month periods following the Closing ("Test Year(s)") sufficient to (i) fund the Renewal and Replacement Requirement, (ii) fund (iii) the Capital Improvement Plan Requirement pay 30 year level debt service on the Acquisition Bonds, and (iv) provide Buyer with net profits of $4.5 Million. The remaining bond proceeds for capital improvements funded in the Acquisition Bonds, plus interest earnings on such bond proceeds, may be allocated to fund short falls in the Capital Improvement Requirement in each of the Test Years in such amounts as may be necessary to meet such Test Year's Net Revenues test (the "Capital Funds Allocation").

Each year, Buyer and Seller will review the Net Revenues. In the event Buyer determines that Net Revenues, together with any revenue guarantee payments pursuant to subsection (E) below, are not sufficient to provide all of such amounts in clauses (i) through (iv) of the preceding sentence, the Buyer shall notify the Seller of such determination, and confer with the Buyer's underwriter and Seller to set forth in full its reasoning therefore. At the end of 36 months following the Closing, such portions of Installment 2 shall be deferred one year or such time as necessary so that the Installment will be equal to Net Revenues less the amounts set forth in (i) through (iv) in the preceding paragraph. Notwithstanding the above, the balance of any unpaid Purchase Price as a result of this subsection shall be paid to Seller within five (5) years of the date of Closing.

(C) Purchase Price Adjustments. Installment 2 of the Purchase Price may be reduced under the following circumstances:

(i) the amount necessary to fund any indemnity amounts owed by Seller under Article 11 hereunder, and

(ii) for all Remedial Capital Projects Amounts.

Within 20 days of the execution of this Agreement, Seller will provide Buyer with its' current five year capital improvement program. Buyer shall notify Seller in writing of the Remedial Capital Projects Amount, if any. Seller shall identify the projects and estimated costs that comprise the Remedial Capital Projects Amount which are not included on Seller's five year capital improvement program. If Seller does not concur that a project is a Remedial Capital Project or part of the Capital Improvement Plan Requirement during the initial five year post Closing time period the matter shall be submitted to the dispute resolution process set forth in 13.5.

(D) Dispute Resolution. Prior to implementing any reduction or offset, the Buyer shall provide written notice to Seller of any proposed reduction or offset. Seller shall have twenty (20) days to provide Buyer written notice of objection to any such reductions or offset. Buyer and Seller shall have sixty (60) days following written notice of objection from Buyer to amicably resolve Buyer's objections. To the extent any objections cannot be reconciled, either party may submit such objection to the Dispute Resolution Process. Buyer may at any time deposit any Reduction Amount with an escrow agent pending a final resolution under the Dispute Resolution Process, pursuant to an Escrow Agreement reasonably satisfactory to the parties and to the extent Buyer has done so Buyer shall not be deemed in default hereunder.

(E) Seller shall provide a guarantee ("Guarantee") in the form to be agreed upon with 30 days after execution of this Agreement that Buyer will receive Gross Revenues constituting monthly water and sewer charges ("Monthly Fees") for the first twelve months after Closing of $95,318,000; for the second twelve months of $97,701,000; and for the third twelve months of $100,143,000. If the Buyer lowers any Monthly Fees during the forgoing time periods, the amount guaranteed will be reduced by the amount the Monthly Fees would have been if such reduction had not occurred.

(F) The Buyer agrees to use all reasonable commercial efforts to issue the Acquisition Bonds. In the event the Buyer, after consultation with the Buyer's financial advisor(s), underwriter(s), legal advisors, and with Seller, in good faith, determines that some or all of such Acquisition Bonds cannot be sold on a date that permits the Closing to occur on or prior to December 15, 2002, in that the Acquisition Bonds Net Proceeds would be less than $433,000,000, then the Buyer shall immediately notify Seller in writing of such determination, with such notice setting forth in reasonable detail the bases upon which such determination was made, and the requirements, if reasonably ascertainable to Seller, for ultimate issuance of all of the Bonds or such portion thereof that would result in Acquisition Bond Net Proceeds received in an amount equal to or greater than $433,000,000 on or prior to December 15, 2002. Upon receipt of such notice Seller shall have the option of (1) at any time between the receipt of the notice and the issuance of the Bonds, closing the transaction, and increasing the future installments set forth above by the amount that the Acquisition Bonds Net Proceeds are less than $433,000,000 in an equitable manner as agreed to by both Buyer and Seller; (2) postponing the Closing until such time as Acquisition Bonds resulting in Acquisition Bonds Net Proceeds of not less than $433,000,000 can reasonably be issued in accordance with this Agreement; or (3) canceling this Agreement, and, if cancelled, thereupon the Buyer and Seller shall have no liabilities and no further obligations to each other under this Agreement, except that Seller shall pay to Buyer the Due Diligence Expenses.

For purposes of this Section 2.3(b), the Capital Charges remitted to and retained by Seller shall not include the portion thereof representing AFPI, to the extent of the following:

Period	Percentage of AFPI
for Capital Charges received until the first anniversary date of the Closing	0%
for Capital Charges received until the second anniversary date of the Closing	20%
for Capital Charges received until the third anniversary date of the Closing	40%
for Capital Charges received until the fourth anniversary date of the Closing	60%
for Capital Charges received until the fifth anniversary date of the Closing	80%
and thereafter	100%

2.4 Liabilities

(a) Assumed Liabilities. On the Closing Date, but effective as of the Effective Time, the Buyer shall assume and agree to discharge only the following Liabilities of Seller (the "Assumed Liabilities"):

(i) any account payable (other than an account payable to any Related Person of Seller) arising with respect to the System, that remains unpaid at and is not delinquent as of the Effective Time but only to extent it is included to determine the Final True Up as set forth in Section 2.7(c);

(ii) any account payable arising with respect to the System, (other than a account payable to any Related Person of Seller) incurred by Seller in the Ordinary Course of Business between the date of this Agreement and the Effective Time that remains unpaid at and is not delinquent as of the Effective Time but only to extent it is included to determine the Final True Up as set forth in Section 2.7(c);

(iii) any Liability to Seller's customers (other than an account payable) incurred by Seller in the Ordinary Course of Business outstanding as of the Effective Time, including, but not limited to Customer Deposits, (other than any

Liability arising out of or relating to a Breach that occurred prior to the Effective Time);

(iv) any Liability arising after the Effective Time under the Seller Contracts (other than any Liability arising under the contracts described on Exhibit 2.2 or arising out of or relating to a Breach that occurred prior to the Effective Time); any Liability of Seller arising after the Effective Time under any Seller Contract included in the Assets that is entered into by Seller after the date hereof in the Ordinary Course of Business or in accordance with the provisions of this Agreement (other than any Liability arising out of or relating to a Breach that occurred prior to the Effective Time), and

(v) any Liability of Buyer under this Agreement or any other document executed in connection with the Contemplated Transactions, and

(vi) any Liability of Buyer based upon Buyer's acts or omissions occurring after the Effective Time, and

(vii) any Liability arising after Closing from operation of the System.

(b) Retained Liabilities. The Retained Liabilities shall remain the sole responsibility of and shall be retained, paid, performed and discharged solely by Seller. "Retained Liabilities" shall mean all Liabilities other than Assumed Liability.

2.5 Allocation

Seller shall prepare and deliver IRS Form 8594 to Buyer within forty-five (45) days after the Closing Date to be filed with the IRS. In any Proceeding related to the determination of any Tax, neither Buyer nor Seller shall contend or represent that such allocation is not a correct allocation.

2.6 Closing

The purchase and sale provided for in this Agreement (the "Closing") will take place at the offices of Buyer's counsel commencing at 10:00 a.m. (local time) on or before December 15, 2002, unless Buyer and Seller otherwise agree. Subject to the provisions of Section 9, failure to consummate the purchase and sale provided for in this Agreement on the date and time and at the place determined pursuant to this Section 2.6 will not result in the termination of this Agreement and will not relieve any party of any obligation under this Agreement. In such a situation, the Closing will occur as soon as practicable, subject to Section 9.

2.7 Closing Obligations

In addition to any other documents to be delivered under other provisions of this Agreement, at the Closing:

(a) Seller shall deliver to Buyer, together with funds sufficient to pay all Taxes necessary for the transfer, filing or recording thereof:

(i) a bill of sale for all of the Assets that are Tangible Personal Property in the form to be agreed upon by the parties prior to Closing (the "Bill of Sale") executed by Seller and the guaranty;

(ii) an assignment of all of the Assets that are intangible personal property in the form to be agreed upon by the parties prior to Closing , which assignment shall also contain Buyer's undertaking and assumption of the Assumed Liabilities (the "Assignment and Assumption Agreement") executed by Seller;

(iii) for each interest in Real Property identified on Exhibit 3.7(a) and (b), a recordable special warranty deed; for all easement interests, an assignment of easements without warranty; for each leasehold interest, an assignment of lease, or such other appropriate document or instrument of transfer, as the case may require, together with a general assignment by the Seller of any and all rights or interests Seller may otherwise have or hold (whether by license, permit, prescriptive right, or otherwise) in respect of its operation of the System, to occupy, use, traverse, spray, percolate through, burrow under, each in form and substance satisfactory to Buyer and its counsel and executed by Seller;

(iv) assignments of all Intellectual Property Assets executed by Seller in form reasonably satisfactory to Buyer;

(v) such other deeds, bills of sale, assignments, certificates of title, documents and other instruments of transfer and conveyance as may reasonably be requested by Buyer, each in form and substance agreed upon by the parties prior to Closing, executed by Seller;

(vi) employment agreements in the form to be prepared by Buyer in accordance with the provisions of this Agreement, executed by such members of Seller's senior management team as identified by Buyer in writing within ten business days after execution of this Agreement (the "Employment Agreements");

(vii) assignments of all construction work in progress in form reasonably acceptable to Buyer which have not yet been placed in service as of the date of the Closing (such capital improvements which have been placed in service being part of the Facilities which are otherwise conveyed by Seller hereunder);

(viii) a certificate executed by Seller as to the accuracy of its representations and warranties as of the date of this Agreement and as of the Closing in accordance with Section 7.1 and as to its compliance with and performance of their covenants and obligations to be performed or complied with at or before the Closing in accordance with Section 7.2; and

(ix) a certificate of the Secretary of Seller certifying, as complete and accurate as of the Closing, attached copies of the Governing Documents of Seller, certifying and attaching all requisite resolutions or actions of Seller's board of directors and shareholders approving the execution and delivery of this Agreement and the consummation of the Contemplated Transactions and certifying to the incumbency and signatures of the officers of Seller executing this Agreement and any other document relating to the Contemplated Transactions.

(b) Buyer shall deliver to Seller:

(i) Installment 1 of Four Hundred Thirty-Three Million dollars ($433,000,000) plus or minus such other funds as set forth on a closing statement to be agreed upon between Buyer and Seller pursuant to the terms of this Agreement by wire transfer to a domestic account of a United States bank specified by the closing Seller in a writing delivered to Buyer at least three (3) business days prior to the Closing Date;

(ii) the Assignment and Assumption Agreement executed by Buyer;

(iii) the executed Employment Agreements ;

(iv) a certificate executed by Buyer as to the accuracy of its representations and warranties as of the date of this Agreement and as of the Closing in accordance with Section 8.1 and as to its compliance with and performance of its covenants and obligations to be performed or complied with at or before the Closing in accordance with Section 8.2; and

(v) a certificate of the Secretary of Buyer certifying, as complete and accurate as of the Closing, attached copies of the Governing Documents of Buyer and certifying and attaching all requisite resolutions or actions of Buyer's governing board approving the execution and delivery of this Agreement and the consummation of the Contemplated Transactions and certifying to the incumbency and signatures of the officers of Buyer executing this Agreement and any other document relating to the Contemplated Transactions.

(c) As additional consideration for the transaction the determination of the following (the "Final True Up") will take place between 120 and 140 days after the Closing and, in the event that the parties cannot agree on the foregoing, then either party

may submit such dispute to the Dispute Resolution Process. To the extent that Eligible Accounts (as hereinafter defined) and Eligible Unbilled Revenues (as hereinafter defined) sold to the Seller hereunder as of the Effective Time minus accounts payable assumed by the Buyer hereunder as of the Effective Time ("Final Computed Amount") is in an amount greater than zero ($0) Dollars, then the Buyer shall immediately pay to the Seller the difference and to the extent that the Final Computed Amount is less than zero ($0) Dollars, then the Seller shall immediately pay to the Buyer the difference. The payment in the foregoing sentence shall be net of any payments made pursuant to the second sentence of this Section. "Eligible Accounts" means Accounts Receivable outstanding as of the Effective Time that are actually collected by the Buyer within 90 days after the Effective Time and "Eligible Unbilled Accounts" means Unbilled Accounts outstanding as of the Effective Time that are actually collected by the Buyer within 120 days after the Effective Time.

(d) At the Closing, the Buyer shall have received (i) an opinion of counsel acceptable to the Buyer stating that neither the City of Gulf Breeze nor the City of Milton will be held liable, as a matter of law, for the liabilities of the Buyer and (ii) an opinion of counsel acceptable to the Buyer stating that upon the acquisition of the System by the Buyer, the rates, fees and charges for the services and facilities of the System are not subject to regulation by the Florida Public Service Commission or any local regulatory authority.

2.8 Consents

(a) If there are any Material Consents that have not yet been obtained (or otherwise are not in full force and effect) as of the Closing, in the case of each Seller Contract as to which such Material Consents were not obtained (or otherwise are not in full force and effect) (the "Restricted Material Contracts"), Buyer may waive the closing conditions as to any such Material Consent and either:

(i) elect to have Seller continue its efforts to obtain the Material Consents; or

(ii) elect to have Seller retain that Restricted Material Contract and all Liabilities arising therefrom or relating thereto; or

(iii) elect to have Seller require any other obligations under such contract to perform their obligations under such contract and remit to Seller the amounts due to such obligations, for payment by the Seller to such obligations.

If Buyer elects to have Seller continue its efforts to obtain any Material Consents and the Closing occurs, notwithstanding Sections 2.1 and 2.4, neither this Agreement nor the Assignment and Assumption Agreement nor any other document related to the consummation of the Contemplated Transactions shall constitute a sale, assignment,

assumption, transfer, conveyance or delivery or an attempted sale, assignment, assumption, transfer, conveyance or delivery of the Restricted Material Contracts, and following the Closing, the parties shall use Best Efforts, and cooperate with each other, to obtain the Material Consent relating to each Restricted Material Contract as quickly as practicable. Pending the obtaining of such Material Consents relating to any Restricted Material Contract, the parties shall cooperate with each other in any reasonable and lawful arrangements designed to provide to Buyer the benefits of use of the Restricted Material Contract for its term (or any right or benefit arising thereunder, including the enforcement for the benefit of Buyer of any and all rights of Seller against a third party thereunder). Once a Material Consent for the sale, assignment, assumption, transfer, conveyance and delivery of a Restricted Material Contract is obtained, Seller shall promptly assign, transfer, convey and deliver such Restricted Material Contract to Buyer, and Buyer shall assume the obligations under such Restricted Material Contract assigned to Buyer from and after the date of assignment to Buyer pursuant to a special-purpose assignment and assumption agreement substantially similar in terms to those of the Assignment and Assumption Agreement (which special-purpose agreement the parties shall prepare, execute and deliver in good faith at the time of such transfer, all at no additional cost to Buyer).

(b) If there are any Consents not listed on Exhibit 7.3 necessary for the assignment and transfer of any Seller Contracts to Buyer (the "Nonmaterial Consents") which have not yet been obtained (or otherwise are not in full force and effect) as of the Closing, Buyer shall elect at the Closing, in the case of each of the Seller Contracts as to which such Nonmaterial Consents were not obtained (or otherwise are not in full force and effect) (the "Restricted Nonmaterial Contracts"), whether to:

(i) accept the assignment of such Restricted Nonmaterial Contract, in which case, as between Buyer and Seller, such Restricted Nonmaterial Contract shall, to the maximum extent practicable and notwithstanding the failure to obtain the applicable Nonmaterial Consent, be transferred at the Closing pursuant to the Assignment and Assumption Agreement as elsewhere provided under this Agreement; or

(ii) reject the assignment of such Restricted Nonmaterial Contract, in which case, notwithstanding Sections 2.1 and 2.4, (A) neither this Agreement nor the Assignment and Assumption Agreement nor any other document related to the consummation of the Contemplated Transactions shall constitute a sale, assignment, assumption, conveyance or delivery or an attempted sale, assignment, assumption, transfer, conveyance or delivery of such Restricted Nonmaterial Contract, and (B) Seller shall retain such Restricted Nonmaterial Contract and all Liabilities arising therefrom or relating thereto.

3. Representations and Warranties of Seller

Seller represents and warrants to Buyer as of the Exhibit Delivery Date (as hereinafter defined) as follows:

3.1 Organization And Good Standing

(a) Seller is qualified to do business in the State of Florida. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida, with full corporate power and authority to conduct its business as it is now being conducted, to own or use the properties and assets that it purports to own or use, and to perform all its obligations under the Agreement. Complete and accurate copies of the Governing Documents of Seller, as currently in effect, will be provided to Buyer prior to Closing.

(b) Seller has no Subsidiary and, except as disclosed to Buyer in writing prior to Closing, does not own any shares of capital stock or other securities of any other Person.

3.2 Enforceability; Authority; No Conflict

(a) This Agreement constitutes the legal, valid and binding obligation of Seller, enforceable against it in accordance with its terms and each of Seller's Closing Documents will constitute the legal, valid, and binding obligation of Seller, enforceable against Sellers. Seller has the absolute and unrestricted right, power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement, and such action has been duly authorized by all necessary action by Seller's shareholders and board of directors.

(b) Neither the execution and delivery of this Agreement nor the consummation or performance of any of the Contemplated Transactions will, directly or indirectly (with or without notice or lapse of time):

(i) Breach (A) any provision of any of the Governing Documents of Seller or (B) any resolution adopted by the board of directors or the shareholders of Seller;

(ii) except as disclosed in Exhibit 3.2, Breach any provision of, or give any Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or payment under, or to cancel, terminate or modify, any Seller Contract; or

(iii) result in the imposition or creation of any Encumbrance upon or with respect to any of the Assets.

(c) Except as provided under Section 367.071, Florida Statutes, and applicable equivalent County Regulatory provisions, Seller is not required to give any notice to or obtain any material consent from any Person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the Contemplated Transactions except as set forth in Exhibit 3.2(c).

3.3 Financial Statements

Seller has delivered or made available to Buyer: (a) an audited balance sheet of Seller as at December 31, 2001, 2000 and 1999 (including the notes thereto, the "Balance Sheet"), and the related audited statements of income, changes in shareholders' equity and cash flows for the fiscal year then ended, including in each case the notes thereto, together with the report thereon of Price Waterhouse Coopers, independent certified public accountants; and (b) an unaudited balance sheet of Seller as at July 31, 2002 (the "Interim Balance Sheet") and the related unaudited statement of income. Such financial statements fairly present the financial condition and the results of operations, changes in shareholders' equity and cash flows of Seller as of the respective dates of and for the periods referred to in such financial statements, all in accordance with GAAP.

3.4 Sufficiency of Assets

The Assets (a) constitute all of the assets, tangible and intangible, of any nature whatsoever, necessary to operate Seller's business in the manner presently operated by Seller and (b) include all of the operating assets of Seller.

3.5 Description of Land

Exhibit 3.5 contains a description of the Land.

3.6 Description of Leased Real Property

Exhibit 3.6 contains a description of the Leased Real Property.

3.7 Title to Assets; Encumbrances

(a) Seller owns good and marketable title to its respective estates in the Land, free and clear of any Encumbrances, other than:

(i) liens for Taxes for the current tax year which are not yet due and payable; and

(ii) those described in Exhibit 3.7 ("Real Estate Encumbrances").

To the extent in Seller's possession, true and complete copies of (A) all deeds, existing title insurance policies and surveys of or pertaining to the Real Property and (B)

all instruments, agreements and other documents evidencing, creating or constituting any Real Estate Encumbrances will be made available to Buyer promptly. Seller warrants to Buyer that, at the time of Closing, the Land shall be free and clear of all Real Estate Encumbrances other than those identified on Exhibit 3.7 as reasonably acceptable to Buyer ("Permitted Real Estate Encumbrances").

(b) Seller owns good and transferable title to all of the other Assets free and clear of any Encumbrances other than those described in Exhibit 3.7 ("Non-Real Estate Encumbrances"). Seller warrants to Buyer that, at the time of Closing, all other Assets shall be free and clear of all Non-Real Estate Encumbrances other than those identified on Exhibit 3.7 and which are reasonably acceptable to Buyer ("Permitted Non-Real Estate Encumbrances" and, together with the Permitted Real Estate Encumbrances, "Permitted Encumbrances").

Seller makes no representations regarding title to or the sufficiency of Appurtenances to the Real Estate.

3.8 Taxes

(a) Tax Returns Filed and Taxes Paid. Seller has filed or caused to be filed on a timely basis all Tax Returns and all reports with respect to Taxes that are or were required to be filed pursuant to applicable Legal Requirements. All Tax Returns and reports filed by Seller are true, correct and complete. Seller has paid, or made provision for the payment of all Taxes that have or may have become due for all periods covered by the Tax Returns or otherwise, or pursuant to any assessment received by Seller, except such Taxes, if any, as are listed in Part 3.14(a) and are being contested in good faith. No claim has been made or is expected to be made by any Governmental Body in a jurisdiction where Seller does not file Tax Returns that it is or may be subject to taxation by that jurisdiction. There are no Encumbrances on any of the Assets that arose in connection with any failure (or alleged failure) to pay any Tax, and Seller has no knowledge of any basis for assertion of any claims attributable to Taxes which, if adversely determined, would result in any such Encumbrance.

(b) Buyer agrees to comply with the requirements of Section 196.295, Florida Statutes, Advalorem and Personal Property Taxes.

(c) Specific Potential Tax Liabilities and Tax Situations.

(i) Withholding. All Taxes that Seller is or was required by Legal Requirements to withhold, deduct or collect have been or will be duly withheld, deducted and collected and, to the extent required, have been paid to the proper Governmental Body or other Person.

3.9 Compliance With Legal Requirements; Governmental Authorizations

(a) Except as set forth in Exhibit 3.11, without representation that items on Exhibit 3.11 are Material:

(i) To Seller's knowledge, Seller is in compliance with each Legal Requirement that is applicable to it or to the conduct or operation of its business or the ownership or use of any of its assets;

(ii) No event has occurred or circumstance exists that (A) may constitute or result in a violation by Seller of, or a failure on the part of Seller to comply with, any Legal Requirement or (B) may give rise to any obligation on the part of Seller to undertake, or to bear all or any portion of the cost of, any remedial action of any nature; and

(iii) Seller has not received any notice or other communication (whether oral or written) from any Governmental Body or any other Person regarding (A) any actual, alleged, possible or potential violation of, or failure to comply with, any Legal Requirement or (B) any actual, alleged, possible or potential obligation on the part of Seller to undertake, or to bear all or any portion of the cost of, any remedial action of any nature.

(b) Exhibit 3.11(b) contains a complete and accurate list of each Governmental Authorization that are held by Seller or that otherwise relates to Seller's business or the Assets. To Seller's knowledge, the Governmental Authorizations listed are valid and in full force and effect.

(i) Seller is in material compliance with all of the Material terms and requirements of the Governmental Authorizations;

(ii) No event has occurred or circumstance exists that may (A) constitute or result directly or indirectly in a material violation of or a material failure to comply with any material term or requirement of any Governmental Authorization or (B) result directly or indirectly in the revocation, withdrawal, suspension, cancellation or termination of, or any modification to, any material Governmental Authorization;

(iii) Seller has not received any notice or other communication (whether oral or written) from any Governmental Body or any other Person regarding (A) any actual, alleged, possible or potential violation of or failure to comply with any term or requirement of any Governmental Authorization or (B) any actual, proposed, possible or potential revocation, withdrawal, suspension, cancellation, termination of or modification to any Governmental Authorization, *other than* such violations, failures, revocations, withdrawals, suspensions, cancellations;

terminations or modifications as have either been resolved with such Governmental Body or Person, or are not material to the successful operation of the System or to the results of such operations; and

(iv) To the best of Seller's knowledge, all applications required to have been filed for the renewal of the material Governmental Authorizations have been duly filed on a timely basis with the appropriate Governmental Bodies, and all other Material filings required to have been made with respect to such Governmental Authorizations have been duly made on a timely basis with the appropriate Governmental Bodies.

The Governmental Authorizations collectively constitute the Governmental Authorizations necessary to permit Seller to lawfully conduct and operate its business in the manner in which it currently conducts and operates such business and to permit Seller to own and use its assets in the manner in which it currently owns and uses such assets.

3.10 Legal Proceedings; Orders

(a) Except as set forth in Exhibit 3.12, there is no pending or, to Seller's knowledge, threatened Proceeding:

(i) by or against Seller or that otherwise relates to or may affect the business of, or any of the assets owned or used by, Seller; or

(ii) that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, any of the Contemplated Transactions.

To the knowledge of Seller, no event has occurred or circumstance exists that is reasonably likely to give rise to or serve as a basis for the commencement of any such Proceeding. Seller will promptly deliver or provided access to Buyer copies of all pleadings, correspondence and other documents relating to each Proceeding listed in Exhibit 3.12. There are no Proceedings listed or required to be listed in Exhibit 3.12 that could have a Material adverse effect on the business, operations, assets, condition or prospects of Seller or upon the Assets.

(b) Except as set forth in Exhibit 3.12; to the knowledge of Seller, no officer, director, agent or employee of Seller is subject to any Order that prohibits such officer, director, agent or employee from engaging in or continuing any conduct, activity or practice relating to the business of Seller.

(c) Except as set forth in Exhibit 3.12:

(i) To Seller's knowledge, Seller is in Material compliance with all of the terms and requirements of each Order to which it or any of the Assets is or has been subject;

(ii) To Seller's knowledge, no event has occurred or circumstance exists that is reasonably likely to constitute or result in a violation of or failure to comply with any term or requirement of any Order to which Seller or any of the Assets is subject material to the operation of the System or a portion thereof; and

(iii) Seller has not received any notice or other communication (whether oral or written) from any Governmental Body or any other Person regarding any actual, alleged, possible or potential violation of, or failure to comply with, any term or requirement of any Order to which Seller or any of the Assets is or has been subject, that has not already been resolved.

3.10(A) Absence of Certain Changes and Events.

(a) Except as set forth in Exhibit 3.10(A), since July 1, 2002, Seller has conducted its business only in the Ordinary Course of Business, there has not been any material adverse change in its business and in the operation of the System, and there has not been:

(b) There has not been any damage to or destruction or loss of any Asset, whether or not covered by insurance that has not been replaced or which will not be replaced prior to the Effective Time;

(c) There has not been (to the extent the same might be material to the results of operations of the System or a portion thereof) a sale (other than sales of Inventories in the Ordinary Course of Business), lease or other disposition of any Asset or property of Seller (including the Intellectual Property Assets);

3.11 Contracts; No Defaults

(a) To the best of Seller's knowledge, Seller has delivered or made available to Buyer accurate and complete copies of

(i) each Seller Contract that involves performance of services or delivery of goods or materials by Seller of an amount or value in excess of $10,000;

(ii) each Seller Contract that involves performance of services or delivery of goods or materials to Seller of an amount or value in excess of $10,000;

(iii) each Seller Contract that was not entered into in the Ordinary Course of Business and that involves expenditures or receipts of Seller in excess of $10,000;

(iv) each Seller Contract affecting the ownership of, leasing of, title to, use of or any leasehold or other interest in any real or personal property (except personal property leases and installment and conditional sales agreements having a value per item or aggregate payments of less than $10,000 and with a term of less than one year);

(v) each Seller Contract with any labor union or other employee representative of a group of employees relating to wages, hours and other conditions of employment; each Seller Contract entered into other than in the Ordinary Course of Business that contains or provides for an express undertaking by Seller to be responsible for consequential damages;

(vi) each Seller Contract for capital expenditures in excess of $10,000;

(vii) each Seller Contract not denominated in U.S. dollars;

(viii) each Seller Contract containing covenants that in any way purport to restrict Seller's business activity or limit the freedom of Seller to engage in any line of business or to compete with any Person;

(ix) each power of attorney of Seller that is currently effective and outstanding;

(x) each written warranty, guaranty, and/or similar undertaking withy respect to contractual performance extended by Seller other than in the Ordinary Course of Business; and

(xi) each amendment, supplement and modification (whether oral or written) in respect of any of the foregoing.

(b) Except as set forth in Exhibit 3.8

(i) each Contract which is to be assigned to or assumed by Buyer under this Agreement is in full force and effect and is valid and enforceable in accordance with its terms;

(ii) each Contract which is being assigned to or assumed by Buyer is assignable by Seller to Buyer without the consent of any other Person;

(c) Except as set forth in Exhibit 3.8 or 3.10

(i) Seller is in compliance with all applicable terms and requirements of each Seller Contract which is being assumed by Buyer;

(ii) To Seller's knowledge, no event has occurred or circumstance exists that (with or without notice or lapse of time) may contravene, conflict with or result in a Breach of, or give Seller or other Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or payment under, or to cancel, terminate or modify, any Seller Contract that is being assigned to or assumed by Buyer;

(iii) To Seller's knowledge, no event has occurred or circumstance exists under or by virtue of any Contract that (with or without notice or lapse of time) would cause the creation of any Encumbrance affecting any of the Assets; and

(iv) Seller has not given to or received from any other Person any notice or other communication (whether oral or written) regarding any actual, alleged, possible or potential violation or Breach of, or default under, any Contract which is being assigned to or assumed by Buyer.

(d) There are no renegotiations of, attempts to renegotiate or outstanding rights to renegotiate any material amounts paid or payable to Seller under current or completed Contracts with any Person having the contractual or statutory right to demand or require such renegotiation and no such Person has made written demand for such renegotiation.

3.12 Environmental Matters

Except as disclosed in Exhibit 3.12:

(e) Seller is in material compliance with and is not in material violation of or liable under, any Environmental Law. Seller has no basis to expect any actual or threatened order, notice or other communication from (i) any Governmental Body or private citizen acting in the public interest or (ii) the current or prior owner or operator of any Facilities, of any actual or potential violation or failure to Materially comply with any Environmental Law, or of any actual or threatened obligation to undertake or bear the cost of any Environmental, Health and Safety Liabilities with respect to any Facility or other property or asset (whether real, personal or mixed) in which Seller has or had an interest, or with respect to any property or Facility at or to which Hazardous Materials were generated, manufactured, refined, transferred, imported, used or processed by Seller.

(f) There are no pending or, to the knowledge of Seller, threatened claims, Encumbrances, or other restrictions of any Material nature resulting from any Environmental, Health and Safety Liabilities or arising under or pursuant to any

Environmental Law with respect to or affecting any Facility or any other property or asset (whether real, personal or mixed) in which Seller has or had an interest.

(g) Seller has no knowledge of or any basis to expect nor has received, any citation, directive, inquiry, notice, Order, summons, warning or other communication that relates to Hazardous Activity, Hazardous Materials, or any alleged, actual, or potential violation or failure to materially comply with any Environmental Law, or of any alleged, actual, or potential obligation to undertake or bear the cost of any Environmental, Health and Safety Liabilities with respect to any Facility or property or asset (whether real, personal or mixed) in which Seller has or had an interest, or with respect to any property or facility to which Hazardous Materials generated, manufactured, refined, transferred, imported, used or processed by

(h) Seller has no Material Environmental, Health and Safety Liabilities with respect to any Facility or, to the knowledge of Seller, with respect to any other property or asset (whether real, personal or mixed) in which Seller (or any predecessor) has or had an interest or at any property geologically or hydrologically adjoining any Facility or any such other property or asset.

(i) There are no Hazardous Materials present on or in the Environment at any Facility or at any geologically or hydrologically adjoining property, that are not in material compliance with Environmental Laws, including any Hazardous Materials contained in barrels, aboveground or underground storage tanks, landfills, land deposits, dumps, equipment (whether movable or fixed) or other containers, either temporary or permanent, and deposited or located in land, water, sumps, or any other part of the Facility or such adjoining property, or incorporated into any structure therein or thereon. Seller has not permitted or conducted, or is aware of, any Hazardous Activity conducted with respect to any Facility or any other property or assets (whether real, personal or mixed) in which Seller has or had an interest except in full compliance with all applicable Environmental Laws.

(j) There has been no material Release or, to the knowledge of Seller, Threat of Release, of any Hazardous Materials at or from any Facility or at any other location where any Hazardous Materials were generated, manufactured, refined, transferred, produced, imported, used, or processed from or by any Facility, or from any other property or asset (whether real, personal or mixed) in which Seller has or had an interest, or to the knowledge of Seller any geologically or hydrologically adjoining property.

(k) Seller has delivered or made available to Buyer true and complete copies and results of any reports, studies, analyses, tests, or monitoring possessed or initiated by Seller pertaining to Hazardous Materials or Hazardous Activities in, on, or under the Facilities, or concerning compliance, by Seller with Environmental Laws including, but not limited to the environmental assessments listed in Exhibit 3.13

(l) Notwithstanding any provision contained herein to the contrary:

(i) Seller shall not be responsible for any costs associated with contamination which has come to be located on or below the Property solely as the result of subsurface migration in an aquifer from a source or sources outside the Property, provided that (a) the Seller did not cause, contribute to, or exacerbate the release or threat of release of the contaminants through an act or omission; (b) the person that caused the release is not an agent or employee of the Seller, and was not in a direct or indirect contractual relationship with the Seller; and (c) there is no alternative basis for the Seller's liability for the contaminated aquifer, such as liability as a generator or transporter of hazardous substances under Section 107(a) (3) and (4) of the Federal Comprehensive Environmental Response Compensation and Liability Act (CERCLA) or liability as an owner by reason of the existence of a source of contamination on the Seller's property other than the contamination that migrated in an aquifer from a source outside the Property.

(ii) Seller shall not be required to pay for the costs of rehabilitation of environmental contamination resulting from a discharge of petroleum products that is eligible for restoration funding from the Inland Protection Trust Fund pursuant to Chapter 376, Florida Statutes, in advance of commitment of restoration funding in accordance with the sites priority ranking pursuant to Section 376.3071(5)(a), Florida Statutes. In the event that Buyer determines that rehabilitation of petroleum contamination must occur earlier than the priority ranking established by the Florida Department of Environmental Protection, Buyer may request an assignment by Seller of all rights to reimbursement from the Inland Protection Trust Fund for such site and proceed with rehabilitation. Seller shall provide an assignment of all rights to reimbursement within ten (10) days of receipt of a request from a Buyer.

3.13 Employee Benefits

(a) Exhibit 3.13(a) contains and lists the following in connection with the current employees of the System: (i) any collective bargaining agreement not otherwise referenced in this Agreement or any employment agreement not terminable on thirty (30) days notice, (ii) each defined benefit plan and defined contribution plan, stock option or ownership plan, executive compensation, bonus, incentive compensation or deferred compensation plan, (iii) vacation pay, medical, dental, disability or death benefit plan, and (iv) any other employee benefit plan, program, arrangement, agreement or policy, including without limitation each "employee benefit plan" within the meaning of Section 3(3) of ERISA, in each case which is maintained or contributed to or by Seller, (collectively the "Employee Plans"). Seller will promptly deliver to Buyer true, accurate and complete copies of the documents comprising each Employee plan (or, with respect to any Employee Plan which is unwritten, a detailed written description of eligibility, participation, benefits, funding arrangements, assets and any other matters which relate to the obligations of Seller.

(b) Except as shown on Exhibit 3.13(b), neither Seller nor any fiduciary of an Employee Plan has engaged in a transaction with respect to any Employee Plan that, assuming the taxable period of such transaction expired as of the date hereof, could subject Seller or Buyer to a Tax or penalty imposed by either Section 4975 of the Code or Section 502(1) of ERISA or a violation of Section 406 of ERISA.

(c) Except as shown on Exhibit 3.13(c), with respect to any Employee Plan or any other such plan maintained by a corporation or trade or business controlled by, controlling or under common control with Seller within the meaning of Section 414 of the Code (collectively the "Controlled Group Plans"):

(i) Full payment has been made of all amounts that are required under the terms of each Controlled Group Plan to be paid as contributions with respect to all periods prior to and including the last day of the most recent fiscal year of such Controlled group Plan ended on or before the date of this Agreement and all periods thereafter prior to the Closing Date, and no accumulated funding deficiency or liquidity shortfall (as those terms are defined in Section 412 of the Code) has been incurred with respect to any such Employee Plan, whether or not waived.

(ii) No Controlled Group Plan, if subject to Title IV of ERISA, has been completely or partially terminated, nor has any event occurred nor does any circumstance exist that could result in the partial termination of any such Controlled Group Plan.

(iii) The form of all Controlled Group Plans is in substantial compliance with the applicable terms of ERISA, the Code, and any other applicable laws, including the Americans with Disabilities Act of 1990, the Family Medical Leave Act of 1993 and the Health Insurance Portability and Accountability Act of 1996, and such plans have been operated in compliance with such laws and the written Controlled Group Plan documents.

(iv) Neither Seller nor any corporation or trade or business controlled by, controlling or under common control with Seller within the meaning of Section 414 of the Code contributes or is obligated to contribute to any multiemployer plan (as defined in Section 3(3 7) of ERISA) or has completely or partially withdrawn from (as defined in ERISA Sections 4203 or 4205) any multiemployer plan under any circumstances which would impose any Liability on Buyer.

(d) Except as shown on Exhibit 3.13(d), Seller has, at all times, complied, and currently complies, in all material respects with the applicable continuation requirements for its welfare plans, including (i) Section 4980B of the Code (as well as its predecessor provision, Section 162(k) of the Code) and Section 601 through 608, inclusive, of ERISA (collectively "COBRA") and (ii) any applicable state statutes mandating health insurance continuation coverage for employees.

(e) Except for the continuation coverage requirements of COBRA, and except as shown on Exhibit 3.13(e) Seller has no obligations or potential liability for benefits to employees, former employees or their respective dependents following termination of employment or retirement under any of the Employee Plans that are welfare benefit plans as defined in Section 3(1) of ERISA

3.14 Intellectual Property Assets

(a) The term "Intellectual Property Assets" means all intellectual property owned or licensed (as licensor or licensee) by Seller in which Seller has a proprietary interest, including:

(iii) Seller's name, all assumed fictional business names, trade names, registered and unregistered trademarks, service marks and applications (collectively, "Marks");

(iv) all patents, patent applications and inventions and discoveries that may be patentable (collectively, "Patents");

(v) all registered and unregistered copyrights in both published works and unpublished works (collectively, "Copyrights");

(vi) all rights in mask works;

(vii) all know-how, trade secrets, confidential or proprietary information, customer lists, Software, technical information, data, process technology, plans, drawings and blue prints (collectively, "Trade Secrets"); and

(viii) all rights in internet web sites and internet domain names presently used by Seller (collectively "Net Names").

(b) Exhibit 3.14 contains a complete and accurate list and summary description and Seller has delivered to Buyer correct and complete copies of all Intellectual Property Assets, except for any license implied by the sale of a product and perpetual, paid-up licenses for commonly available Software programs with a value of less than $500 under which Seller is the licensee except as otherwise indicted on the foregoing exhibit. Except as set forth in Exhibit 3.14, the Intellectual Property Assets are all those necessary for the operation of Seller's business as it is currently conducted. Seller is the owner or licensee of all right, title and interest in and to each of the Intellectual Property Assets, free and clear of all Encumbrances, and has the right to use and transfer without payment to a Third Party all of the Intellectual Property Assets, other than in respect of licenses listed in Exhibit 3.14. To Seller's knowledge, no Intellectual Property Asset is infringed, or to Seller's knowledge, has been challenged or threatened in any way and does not infringe the intellectual property rights of any Third Party.

3.15 Brokers Or Finders

Neither Seller nor any of its Representatives have incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payments in connection with the sale of Seller's business or the Assets or the Contemplated Transactions.

3.16 Disclosure

(m) No Material representation or warranty made by Seller in this Agreement contains any Material untrue statement or omits to state a Material fact necessary to make any of them, in light of the circumstances in which it was made, not misleading.

3.17 Employees

Exhibit 3.23(a) contains a complete and accurate list of the following information for each employee and director of Seller, including each employee on leave of absence or layoff status: name; job title; date of hiring or engagement; date of commencement of employment or engagement; current compensation paid or payable and any change in compensation since July 1, 2002; sick and vacation leave that is accrued but unused; and service credited for purposes of vesting and eligibility to participate under any Employee Plan; or any other employee or director benefit plan, except as otherwise indicated on said exhibit.

3.18 Labor Disputes; Compliance

(a) Except as shown on Exhibit 3.18, Seller has complied in all material respects with all Legal Requirements relating to employment practices, terms and conditions of employment, equal employment opportunity, nondiscrimination, immigration, wages, hours, benefits, collective bargaining and other requirements under state of federal law, the payment of social security and similar Taxes and occupational safety and health. Seller is not liable for the payment of any Taxes, fines, penalties, or other amounts, however designated, for failure to comply with any of the foregoing Legal Requirements.

(b) Except as shown on Exhibit 3.18, (i) Seller has not been, and is not now, a party to any collective bargaining agreement or other labor contract; (ii) there has not been, there is not presently pending or existing, and to Seller's knowledge there is not threatened, any strike, slowdown, picketing, work stoppage or employee grievance process involving Seller; (iii) to Seller's knowledge no event has occurred or circumstance exists that could provide the basis for any work stoppage or other labor dispute; (iv) there is not pending or, to Seller's knowledge, threatened against or affecting Seller any Proceeding relating to the alleged violation of any Legal Requirement pertaining to labor relations or employment matters, including any charge or complaint

filed with the National Labor Relations Board or any comparable Governmental Body, and there is no organizational activity or other labor dispute against or affecting Seller or the Facilities; (v) no application or petition for an election of or for certification of a collective bargaining agent is pending; (vi) no grievance or arbitration Proceeding exists that might have an adverse effect upon Seller or the conduct of its business; (vii) there is no lockout of any employees by Seller, and no such action is contemplated by Seller; and (viii) to Seller's knowledge there has been no pending charge of discrimination filed against or threatened against Seller with the Equal Employment Opportunity Commission or similar Governmental Body or any pending employment discrimination, wrongful discharge, retaliation lawsuits or lawsuits alleging whistleblowing.

3.19 Capital Program.

The Capital Improvement Plan Requirement, exclusive of the cost of any Remedial Capital Projects and any Remedial Capital Project Amounts, includes sufficient moneys to satisfy all obligations owned by the Seller under developer agreements assumed by the Buyer.

4. Representations and Warranties of Buyer

Buyer represents and warrants to Seller as follows:

4.1 Organization and Good Standing

Buyer is a governmental entity duly organized, validly existing and in good standing under the laws of the State of Florida, with full governmental power and authority to conduct its business as it is now conducted and to complete the transactions contemplated by this Agreement.

4.2 Authority; No Conflict

(a) This Agreement constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms. Upon the execution and delivery by Buyer of the agreements to be executed or delivered by Buyer at Closing (collectively, the "Buyer's Closing Documents"), each of the Buyer's Closing Documents will constitute the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its respective terms. Buyer has the absolute and unrestricted right, power and authority to execute and deliver this Agreement and the Buyer's Closing Documents and to perform its obligations under this Agreement and the Buyer's Closing Documents, and such action has been duly authorized by all necessary corporate action.

(b) Neither the execution and delivery of this Agreement by Buyer nor the consummation or performance of any of the Contemplated Transactions by Buyer will give any Person the right to prevent, delay or otherwise interfere with any of the Contemplated Transactions pursuant to:

(i) any provision of Buyer's Governing Documents;

(ii) any resolution adopted by the board of directors or the shareholders of Buyer;

(iii) any Legal Requirement or Order to which Buyer may be subject; or

(iv) any Contract to which Buyer is a party or by which Buyer may be bound.

Buyer is not and will not be required to obtain any Consent from any Person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the Contemplated Transactions.

4.3 Certain Proceedings

There is no pending Proceeding that has been commenced against Buyer and that challenges, or may have the effect of preventing, delaying, making illegal or otherwise interfering with, any of the Contemplated Transactions. To Buyer's knowledge, no such Proceeding has been threatened.

4.4 Brokers Or Finders

Neither Buyer nor any of its Representatives have incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with the Contemplated Transactions.

5. Covenants of Seller Prior to Closing

5.1 Access and Investigation

Between the date of this Agreement and the Closing Date, and upon reasonable advance notice received from Buyer and subject to any applicable confidentiality obligations, Seller shall (a) afford Buyer and its Representatives and prospective lenders, underwriters, and their Representatives (collectively, "Buyer Group") full and free access, during regular business hours, to Seller's personnel, properties (including subsurface testing), Contracts, Governmental Authorizations, books and Records and other documents and data, such rights of access to be exercised in a manner that does not unreasonably interfere with the operations of Seller; (b) furnish Buyer Group with copies of all such Contracts, Governmental Authorizations, books and Records and other existing documents and data as Buyer may reasonably request; (c) furnish Buyer Group with such additional financial, operating and other relevant data and information as Buyer may reasonably request; and (d) otherwise cooperate and assist, to the extent reasonably requested by Buyer, with Buyer's investigation of the properties, assets and financial condition related to Seller. In addition, Buyer shall have the right to have the Real

Property and Tangible Personal Property inspected by Buyer Group, at Buyer's sole cost and expense, for purposes of determining the physical condition and legal characteristics of the Real Property and Tangible Personal Property. In the event subsurface or other destructive testing is recommended by any of Buyer Group, Buyer shall be permitted to have the same performed with the prior consent of Seller, which shall not be unreasonably withheld.

5.2 Operation of the Business of Seller

Between the date of this Agreement and the Closing, Seller shall:

(a) conduct its business in the Ordinary Course of Business;

(b) except as otherwise directed by Buyer in writing, and without making any commitment on Buyer's behalf, use its Best Efforts to preserve intact its current business organization, keep available the services of its officers, employees and agents and maintain its relations and good will with suppliers, customers, landlords, creditors, employees, agents and others having business relationships with it;

(c) confer with Buyer prior to implementing operational decisions of a Material nature;

(d) otherwise report periodically to Buyer concerning the status of its business, operations and finances;

(e) make no Material changes in senior management personnel identified by Buyer in Section 2.7, without prior consultation with Buyer;

(f) maintain the Assets in a state of repair and condition that complies with Legal Requirements and is consistent with the requirements and normal conduct of Seller's business;

(g) keep in full force and effect, without amendment, all rights relating to Seller's business;

(h) comply with all Legal Requirements and contractual obligations applicable to the operations of Seller's business;

(i) cooperate with Buyer and assist Buyer in identifying the Governmental Authorizations required by Buyer to operate the business from and after the Closing Date and either transferring existing Governmental Authorizations of Seller to Buyer, where permissible, or obtaining new Governmental Authorizations for Buyer;

(j) upon request from time to time, execute and deliver all documents, make all truthful oaths, testify in any Proceedings and do all other acts that may be reasonably

necessary to consummate the Contemplated Transactions, all without further consideration; and

(k) maintain all books and Records of Seller relating to Seller's business in the Ordinary Course of Business.

5.3 Negative Covenant

Except as otherwise expressly permitted herein, between the date of this Agreement and the Closing Date, Seller shall not without the prior written Consent of Buyer which shall not be unreasonably withheld and which shall be promptly acted upon by Buyer, (a) make any modification to any material Contract or Governmental Authorization; or (b) allow the levels of raw materials, supplies or other materials included in the Inventories to vary Materially from the levels customarily maintained.

5.4 Required Approvals

As promptly as practicable after the date of this Agreement, Seller shall make all filings required by Legal Requirements to be made by it in order to consummate the Contemplated Transactions. Seller also shall cooperate with Buyer and its Representatives with respect to all filings that Buyer elects to make or, pursuant to Legal Requirements, shall be required to make in connection with the Contemplated Transactions. Seller also shall cooperate with Buyer and its Representatives in obtaining all Material Consents.

5.5 Notification

Between the date of this Agreement and the Closing, Seller shall promptly notify Buyer in writing if any of them becomes aware of (a) any fact or condition that causes or constitutes a Breach of any of Seller's representations and warranties made as of the date of this Agreement or (b) the occurrence after the date of this Agreement of any fact or condition that would or be reasonably likely to (except as expressly contemplated by this Agreement) cause or constitute a Breach of any such representation or warranty had that representation or warranty been made as of the time of the occurrence of, or Seller's discovery of, such fact or condition. During the same period, Seller also shall promptly notify Buyer of the occurrence of any Breach of any covenant of Seller in this Article 5 or of the occurrence of any event that may make the satisfaction of the conditions in Article 7 impossible or unlikely.

5.6 No Negotiation

Until such time as this Agreement shall be terminated pursuant to Section 9.1, Seller shall not directly or indirectly solicit, initiate, encourage or entertain any inquiries or proposals from, discuss or negotiate with, provide any nonpublic information to or consider the merits of any inquiries or proposals from any Person (other than Buyer)

relating to any business combination transaction involving Seller or the System (other than in the Ordinary Course of Business).

5.7 Best Efforts

Seller shall use their Best Efforts to cause the conditions in the Agreement to be satisfied and on or before the Closing, Seller shall (a) amend its Governing Documents and take all other actions necessary to change its name to one sufficiently dissimilar to Seller's present name, in Buyer's judgment, to avoid confusion and (b) take all actions requested by the Buyer to either assume such name as an assumed name or to change its name to Seller's present name.

5.8 Payment Of Liabilities

Seller shall pay or otherwise satisfy in the Ordinary Course of Business all of its Liabilities and obligations as they come due.

5.9 Current Evidence of Title

(a) As soon as is reasonably possible, and in no event later than thirty (30) Business Days after the date of this Agreement, Seller shall furnish to Buyer, at Seller's expense, for each parcel listed in Exhibit 3.5

(i) from Commonwealth Land Title Insurance Company (the "Title Policy") (the "Title Insurer"):

(1) a title commitment or title commitments issued by the Title Insurer to insure title to each parcel listed in Exhibit 3.5, , in the aggregate amount of that portion of the Purchase Price allocated to the Land , as specified in Part 2.5, covering such Land , naming Buyer as the proposed insured and having an effective date after the date of this Agreement, wherein the Title Insurer shall agree to issue an ALTA form owner's title insurance policy 1992 (ID-17-92) with Florida modifications (collectively the "Title Commitment"); and

(2) copies of all recorded documents listed as Schedule B-1 matters to be terminated or satisfied in order to issue the policy described in the Title Commitment or as special Schedule B-2 exceptions thereunder (the "Recorded Documents").

(b) The Title Commitment shall include the Title Insurer's requirements for issuing its title policy, which requirements shall be met by Seller on or before the Closing Date (including those requirements that must be met by releasing or satisfying monetary

Encumbrances, but excluding Encumbrances that will remain after Closing and those requirements that are to be met solely by Buyer).

(c) If any of the following shall occur (collectively, a "Title Objection"):

(i) The Title Commitment or other evidence of title or search of the appropriate real estate records discloses that any party other than Seller has title to the insured estate covered by the Title Commitment;

(ii) any title exception is disclosed in Schedule B to any Title Commitment that is not one of the Permitted Real Estate Encumbrances or one that Seller specifies when delivering the Title Commitment to Buyer as one that Seller will cause to be deleted from the Title Commitment concurrently with the Closing, including (A) any exceptions that pertain to Encumbrances securing any loans that do not constitute an Assumed Liability and (B) any exceptions that Buyer reasonably believes could materially and adversely affect Buyer's use and enjoyment of the Land described therein; or

(iii) any Survey discloses any matter that Buyer reasonably believes could materially and adversely affect Buyer's use and enjoyment of the Land described therein;

then Buyer shall notify Seller in writing ("Buyer's Notice") of such matters within [ten (10)] business days after receiving all of the Title Commitment, Survey and copies of Recorded Documents for the Facility covered thereby.

(d) Seller shall use its Best Efforts to cure each Title Objection and take all steps required by the Title Insurer to eliminate each Title Objection as an exception to the Title Commitment. Any Title Objection that the Title Company is willing to insure over on terms acceptable to Seller and Buyer is herein referred to as an "Insured Exception." The Insured Exceptions, together with any title exception or matters disclosed by the Survey not objected to by Buyer in the manner aforesaid shall be deemed to be acceptable to Buyer.

(e) Nothing herein waives Buyer's right to claim a breach of Section 3.9(a) or to claim a right to indemnification as provided in Section 11.2 if Buyer suffers Material Damages as a result of a misrepresentation with respect to the condition of title to the Land.

(f) Seller shall use its best efforts to comply with the requirements of Schedule B Section 1 of the Title Commitment. At the Closing, Seller shall identify any Schedule B Section 1 requirements that cannot be satisfied as of the Closing. Seller and Buyer shall agree on a post-Closing process to satisfy these requirements (the "Post-Closing Schedule B Requirements"). Seller shall indemnify as to all Post-Closing Schedule B requirements.

that are not satisfied in accordance with the agreed upon post-Closing process shall be identified by Seller in writing to Buyer.

6. Covenants of Buyer Prior to Closing

6.1 Required Approvals

As promptly as practicable after the date of this Agreement, Buyer shall make, or cause to be made, all filings required by Legal Requirements to be made by it to consummate the Contemplated Transactions. Buyer also shall cooperate, and cause its Related Persons to cooperate, with Seller (a) with respect to all filings Seller shall be required by Legal Requirements to make and (b) in obtaining all Consents identified in Exhibit 7.3, provided, however, that Buyer shall not be required to dispose of or make any change to its business, expend any Material funds or incur any other Material burden in order to comply with this Section 6.1.

6.2 Best Efforts

Buyer shall use its Best Efforts to cause the conditions in this Agreement to be satisfied.

7. Conditions Precedent to Buyer's Obligation to Close

Buyer's obligation to purchase the Assets and to take the other actions required to be taken by Buyer at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Buyer, in whole or in part):

7.1 Accuracy of Representations

(a) All of Seller's representations and warranties in this Agreement (considered collectively), and each of these representations and warranties (considered individually), shall have been accurate as of the Exhibit Delivery Date, and shall be accurate in all material respects as of the time of the Closing as if then made.

(b) Each of the representations and warranties in Sections 3.2(a) and 3.4, and each of the representations and warranties in this Agreement that contains an express materiality qualification, shall be accurate in all respects as of the time of the Closing as if then made.

7.2 Seller's Performance

All of the covenants and obligations that Seller are required to perform or to comply with pursuant to this Agreement at or prior to the Closing (considered

collectively), and each of these covenants and obligations (considered individually), shall have been duly performed and complied with in all Material respects.

7.3 Consents

Each of the Material Consents to be identified by Buyer and agreed to by Seller in Exhibit 7.3 prior to Closing (the "Material Consents") shall have been obtained and shall be in full force and effect which Exhibit shall be attached hereto on or before the time the Due Diligence set forth in Section 13.15 is completed.

7.4 Additional Documents

Seller shall have caused the documents and instruments required by Section 2.7(a) and the following documents to be delivered (or made available) to Buyer:

(a) The articles of incorporation and all amendments thereto of Seller, duly certified as of a recent date by the Secretary of State;

(b) A legal opinion reasonably satisfactory to Buyer; and

(c) Such other documents as Buyer may reasonably request for the purpose of:

(i) evidencing the accuracy of any of Seller's representations and warranties;

(ii) evidencing the performance by Seller of, or the compliance by Seller with, any covenant or obligation required to be performed or complied with by Seller;

(iii) evidencing the satisfaction of any condition referred to in this Article 7;

(iv) otherwise facilitating the consummation or performance of any of the Contemplated Transactions; or

(v) evidence showing the release of all liens, security interests, and other encumbrances other than Permitted Encumbrances (but excluding any Permitted Encumbrances that encumber the Assets held by any entity which has provided or may provide financing to the Seller)

7.5 No Conflict

Neither the consummation nor the performance of any of the Contemplated Transactions will, directly or indirectly, Materially contravene or conflict with or result in a Material violation of or cause Buyer or any Related Person of Buyer to suffer any Material adverse consequence under (a) any applicable Legal Requirement or Order or

(b) any valid Legal Requirement or Order that has been entered by any Governmental Body.

8. Conditions Precedent to Seller's Obligation to Close

Seller's obligation to sell the Assets and to take the other actions required to be taken by Seller at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Seller in whole or in part):

8.1 Accuracy of Representations

All of Buyer's representations and warranties in this Agreement (considered collectively), and each of these representations and warranties (considered individually), shall have been accurate in all Material respects as of the date of this Agreement and shall be accurate in all Material respects as of the time of the Closing as if then made.

8.2 Buyer's Performance

All of the covenants and obligations that Buyer is required to perform or to comply with pursuant to this Agreement at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), shall have been performed and complied with in all Material respects.

8.3 Additional Documents

Buyer shall have caused a legal opinion satisfactory to Seller to be supplied and the documents and instruments required by Section 2.7(b) and the following documents to be delivered or made available to Seller:

(a) such other documents as Seller may reasonably request for the purpose of:

(i) evidencing the accuracy of any representation or warranty of Buyer,

(ii) evidencing the performance by Buyer of, or the compliance by Buyer with, any covenant or obligation required to be performed or complied with by Buyer or

(iii) evidencing the satisfaction of any condition referred to in this Article

8.4 No Injunction

There shall not be in effect any Legal Requirement or any injunction or other Order that (a) prohibits the consummation of the Contemplated Transactions and (b) has

been adopted or issued, or has otherwise become effective, since the date of this Agreement.

9. Termination

9.1 Termination Events

By notice given prior to or at the Closing, subject to Section 9.2, this Agreement may be terminated as follows:

(a) by Buyer if a material Breach of any provision of this Agreement has been committed by Seller and such Breach has not been waived by Buyer;

(b) by Seller if a material Breach of any provision of this Agreement has been committed by Buyer and such Breach has not been waived by Seller;

(c) by Buyer if any condition in Article 7 has not been satisfied as of the date specified for Closing in the first sentence of Section 2.6 or if satisfaction of such a condition by such date is or becomes impossible (other than through the failure of Buyer to comply with its obligations under this Agreement), and Buyer has not waived such condition on or before such date;

(d) by Seller if any condition in Article 8 has not been satisfied as of the date specified for Closing in the first sentence of Section 2.6 or if satisfaction of such a condition by such date is or becomes impossible (other than through the failure of Seller to comply with its obligations under this Agreement), and Seller has not waived such condition on or before such date;

(e) by mutual consent of Buyer and Seller;

(f) by Buyer if the Closing has not occurred on or before December 15, 2002 or such later date as the parties may agree upon, unless the Buyer is in material Breach of this Agreement; or

(g) by Seller if the Closing has not occurred on or before December 15, 2002 or such later date as the parties may agree upon, unless the Seller is in material Breach of this Agreement.

9.2 Effect Of Termination

Each party's right of termination under Section 9.1 is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of such right of termination will not be an election of remedies. If this Agreement is terminated pursuant to Section 9.1, all obligations of the parties under this Agreement will terminate, except that the obligations of the parties in this Section 9.2 and Articles 12 and 13 (except for

those in Section 13.5) will survive, provided, however, that, if this Agreement is terminated because of a Breach of this Agreement by the non-terminating party or because one or more of the conditions to the terminating party's obligations under this Agreement is not satisfied as a result of the party's failure to comply with its obligations under this Agreement, the terminating party's right to pursue all legal remedies will survive such termination unimpaired. Furthermore, notwithstanding any such termination, the Seller shall immediately upon termination pay to the Buyer the Due Diligence Amount.

Neither Buyer nor Seller shall be liable to the other in the event that after the execution of this Agreement there occurs (i) a change of law that prevents the Closing, (ii) any action by a third party that prevents the Closing or (iii) any order by a Governmental Agency or court that prevents the Closing. Both parties agree to diligently defend against a third party attempt to prevent a Closing.

10. Additional Covenants

10.1 Employees and Employee Benefits

(a) Information on Active Employees. For the purpose of this Agreement, the term "Active Employees" shall mean all employees employed on the Closing Date by Seller for its business who are employed exclusively in Seller's business as currently conducted, including employees on temporary leave of absence, including family medical leave, military leave, temporary disability or sick leave, but excluding employees on long-term disability leave.

(b) Employment of Active Employees by Buyer.

(i) Buyer will make offers of employment to all employees who meet the Standards Set Forth on Exhibit 10.1(b) which Buyer will supply to Seller which is accepted by Seller in the exercise of its reasonable judgment and Buyer may interview all Active Employees. Buyer will provide Seller with a list of Active Employees to whom Buyer has made an offer of employment that has been accepted to be effective on the Closing Date (the "Hired Active Employees"). Subject to Legal Requirements, Buyer will have reasonable access to the Facilities and personnel Records (including performance appraisals, disciplinary actions, grievances and medical Records) of Seller for the purpose of preparing for and conducting employment interviews with all Active Employees and will conduct the interviews as expeditiously as possible prior to the Closing Date. Access will be provided by Seller upon reasonable prior notice during normal business hours. Effective immediately before the Closing, Seller will terminate the employment of all Hired Active Employees.

(ii) Neither Seller nor its Related Persons shall solicit the continued employment of any Active Employee (unless and until Buyer has informed Seller

in writing that the particular Active Employee will not receive any employment offer from Buyer) or the employment of any Hired Active Employee after the Closing. Buyer shall inform Seller promptly of the identities of those Active Employees to whom it will not make employment offers, and Seller shall assist Buyer in complying with the WARN Act as to those Active Employees.

(iii) It is understood and agreed that (A) Buyer's expressed intention to extend offers of employment as set forth in this section shall not constitute any commitment, Contract or understanding (expressed or implied) of any obligation on the part of Buyer to a post-Closing employment relationship of any fixed term or duration or upon any terms or conditions other than those that Buyer may establish pursuant to individual offers of employment, and (B) employment offered by Buyer is "at will" and may be terminated by Buyer or by an employee at any time for any reason (subject to any written commitments to the contrary made by Buyer or an employee and Legal Requirements). Nothing in this Agreement shall be deemed to prevent or restrict in any way the right of Buyer to terminate, reassign, promote or demote any of the Hired Active Employees after the Closing or to change adversely or favorably the title, powers, duties, responsibilities, functions, locations, salaries, other compensation or terms or conditions of employment of such employees.

(c) Salaries and Benefits.

(i) Seller shall be responsible for (A) the payment of all wages and other remuneration due to Active Employees with respect to their services as employees of Seller through the close of business on the Closing Date, including pro rata bonus payments and all vacation pay earned prior to the Closing Date; (B) the payment of any termination or severance payments and the provision of health plan continuation coverage in accordance with the requirements of COBRA and Sections 601 through 608 of ERISA; and (C) any and all payments to employees required under the WARN Act.

(ii) Seller shall be liable for any claims made or incurred by Active Employees and their beneficiaries through the Closing Date under the Employee Plans. For purposes of the immediately preceding sentence, a claim will be deemed incurred, in the case of hospital, medical or dental benefits, when the services that are the subject of the charge are performed and, in the case of other benefits (such as disability or life insurance), when an event has occurred or when a condition has been diagnosed that entitles the employee to the benefit.

(d) No Transfer of Assets. Neither Seller nor its Related Persons will any transfer of pension or other employee benefit plan assets to Buyer.

(e) Terms of Employment. Buyer will set its own initial terms and conditions of employment for the Hired Active Employees and others it may hire, including work

rules, benefits and salary and wage structure, all as permitted by law, provide such terms and conditions shall be in the aggregate substantially similar in value to the terms and conditions of such Hired Active Employees under the Seller's employ as disclosed to Buyer herein. Buyer is not obligated to assume any collective bargaining agreements under this Agreement. Seller shall be solely liable for any severance payment required to be made to its employees due to the Contemplated Transactions. Any bargaining obligations of Buyer with any union with respect to bargaining unit employees subsequent to the Closing, whether such obligations arise before or after the Closing, shall be the sole responsibility of Buyer.

(f) General Employee Provisions.

(i) Seller and Buyer shall give any notices required by Legal Requirements and take whatever other actions with respect to the plans, programs and policies described in this Section 10.1 as may be necessary to carry out the arrangements described in this Section 10.1.

(ii) Seller and Buyer shall provide each other with such plan documents and summary plan descriptions, employee data or other information as may be reasonably required to carry out the arrangements described in this Section 10.1.

(iii) If any of the arrangements described in this Section 10.1 are determined by the IRS or other Governmental Body to be prohibited by law, Seller and Buyer shall modify such arrangements to as closely as possible reflect their expressed intent and retain the allocation of economic benefits and burdens to the parties contemplated herein in a manner that is not prohibited by law.

(iv) Seller shall provide Buyer with completed I-9 forms and attachments with respect to all Hired Active Employees, except for such employees as Seller certifies in writing to Buyer are exempt from such requirement.

(v) Buyer shall not have any responsibility, liability or obligation, whether to Active Employees, former employees, their beneficiaries or to any other Person, with respect to any employee benefit plans, practices, programs or arrangements (including the establishment, operation or termination thereof and the notification and provision of COBRA coverage extension) maintained by Seller.

(vi) Seller will require certain assistance from certain Hired Active Employees to process post-Closing obligations of Seller, including, but not limited to, filings with the Florida Public Service Commission and other regulatory agencies and federal wage and tax filings (collectively the "Post-Closing Obligations"), and Buyer agrees to provide the services of such necessary employees to assist Seller with its Post-Closing Obligations. Such assistance shall not unreasonably interfere with the necessary employees' regular duties for Buyer.

As consideration to Buyer for assistance with Seller's Post-Closing Obligations, Seller shall pay Buyer the sum of Fifty Thousand Dollars ($50,000.00), which sum shall be credited to Buyer at the Closing.

10.2 Payment of all Taxes Resulting From Sale of Assets by Seller

Seller shall pay in a timely manner all Taxes resulting from or payable in connection with the sale of the Assets pursuant to this Agreement, regardless of the Person on whom such Taxes are imposed by Legal Requirements.

10.3 Payment of Other Retained Liabilities

In addition to payment of Taxes pursuant to Section 10.2, Seller shall pay, or make adequate provision for the payment, in full all of the Retained Liabilities and other Liabilities of Seller under this Agreement. If any such Liabilities are not so paid or provided for, or if Buyer reasonably determines that failure to make any payments will impair Buyer's use or enjoyment of the Assets or conduct of the business previously conducted by Seller with the Assets, Buyer may, upon ten (10) days notice, at any time after the Closing Date, elect to make all such payments directly (but shall have no obligation to do so) and set off and deduct the full amount of all such payments from the first maturing installments of the unpaid principal balance of the Note pursuant to Section 11.8. Buyer shall receive full credit under the Note and this Agreement for all payments so made.

10.4 Removing Excluded Assets

Within sixty (60) days after the Closing Date, Seller shall remove all Excluded Assets (other than the Capital Charges provided for in Section 2.2 hereof) from all Facilities and other Land to be occupied by Buyer. Such removal shall be done in such manner as to avoid any damage to the Facilities and other properties to be occupied by Buyer and any disruption of the business operations to be conducted by Buyer after the Closing. Any damage to the Assets or to the Facilities resulting from such removal shall be paid by Seller. Should Seller fail to remove the Excluded Assets as required by this Section, Buyer shall have the right, but not the obligation, (a) to remove the Excluded Assets at Seller's sole cost and expense; (b) to store the Excluded Assets and to charge Seller all storage costs associated therewith; (c) to treat the Excluded Assets as unclaimed and to proceed to dispose of the same under the laws governing unclaimed property; or (d) to exercise any other right or remedy conferred by this Agreement or otherwise available at law or in equity. Seller shall promptly reimburse Buyer for all costs and expenses incurred by Buyer in connection with any Excluded Assets not removed by Seller on or before the Closing Date.

10.5 Reports and Returns

Seller shall promptly after the Closing prepare and file all reports and returns required by Legal Requirements relating to the business of Seller as conducted using the Assets, to and including the Effective Time.

10.6 Assistance in Proceedings

Seller will cooperate with Buyer and its counsel in the contest or defense of, and make available its personnel and provide any testimony and access to its books and Records in connection with, any Proceeding involving or relating to (a) any Contemplated Transaction or (b) any action, activity, circumstance, condition, conduct, event, fact, failure to act, incident, occurrence, plan, practice, situation, status or transaction on or before the Closing Date involving Seller or its business or either Shareholder.

10.7 Retention of and Access to Records

After the Closing Date, Buyer shall retain for a period consistent with Buyer's record-retention policies and practices those Records of Seller delivered to Buyer. Buyer also shall provide Seller and their Representatives reasonable access thereto, during normal business hours to enable them to prepare financial statements or tax returns or deal with tax audits. After the Closing Date, Seller shall provide Buyer and its Representatives reasonable access to Records that are Excluded Assets, during normal business hours for any reasonable business purpose specified by Buyer in such notice.

10.8 Further Assurances

Subject to the proviso in Section 6.1, the parties shall cooperate reasonably with each other and with their respective Representatives in connection with any steps required to be taken as part of their respective obligations under this Agreement, and shall (a) furnish upon request to each other such further information; (b) execute and deliver to each other such other documents; and (c) do such other acts and things, all as the other party may reasonably request for the purpose of carrying out the intent of this Agreement and the Contemplated Transactions.

11. Indemnification; Remedies

11.1 Survival

All representations, warranties, covenants and obligations in this Agreement, the certificates delivered pursuant to Section 2.7 and any other certificate or document delivered pursuant to this Agreement shall survive the Closing and the consummation of the Contemplated Transactions, subject to Section 11.7. The right to indemnification, reimbursement or other remedy based upon such representations,

warranties, covenants and obligations shall not be affected by any investigation (including any environmental investigation or assessment) conducted with respect to, or any Knowledge acquired at any time, whether before or after the execution and delivery of this Agreement or the Closing Date, with respect to the accuracy or inaccuracy of or compliance with any such representation, warranty, covenant or obligation. The waiver of any condition based upon the accuracy of any representation or warranty, or on the performance of or compliance with any covenant or obligation, will not affect the right to indemnification, reimbursement or other remedy based upon such representations, warranties, covenants and obligations. For purposes of this Article 11, whenever the phrases "to Seller's knowledge", "to the best of Seller's knowledge", "to the knowledge of Seller", or any similar phrase, or whenever the words "material", "materially" are used in this Agreement (other than in this Article 11), such words and phrases shall be disregarded for purposes of this Article 11 and indemnification hereunder as if such words or phrases were stricken from this Agreement.

11.2 Indemnification and Reimbursement by Seller

Seller will indemnify and hold harmless Buyer, and its Representatives, shareholders, subsidiaries and Related Persons (collectively, the "Buyer Indemnified Persons"), and will reimburse the Buyer Indemnified Persons for any loss, liability, claim, damage, expense (including costs of investigation and defense and reasonable attorneys' fees and expenses) or diminution of value, whether or not involving a Third-Party Claim (collectively, "Damages") (but not including any Damages covered by the offsets for the Remedial Capital Project Amount), arising from or in connection with:

(a) any Breach of any representation or warranty made by Seller in (i) this Agreement (without giving effect to any supplement thereto), (ii) the certificates delivered pursuant to Section 2.7 (for this purpose, each such certificate will be deemed to have stated that Seller's representations and warranties in this Agreement fulfill the requirements of Section 7.1 as of the Closing Date as if made on the Closing Date without giving effect to any supplement thereto, unless the certificate expressly states that the matters disclosed in a supplement have caused a condition specified in Section 7.1 not to be satisfied), (v) any transfer instrument or (vi) any other certificate, document, writing or instrument delivered by Seller pursuant to this Agreement;

(b) any Breach of any covenant or obligation of Seller in this Agreement or in any other certificate, document, writing or instrument delivered by Seller pursuant to this Agreement;

(c) any Liability arising out of the ownership or operation of the Assets prior to the Effective Time other than the Assumed Liabilities;

(d) any brokerage or finder's fees or commissions or similar payments

based upon any agreement or understanding made, or alleged to have been made, by any Person with Seller (or any Person acting on its behalf) in connection with any of the Contemplated Transactions;

(e) any liability under the WARN Act or any similar state or local Legal Requirement that may result from an "Employment Loss", as defined by 29 U.S.C. sect. 2101(a)(6), caused by any action of Seller prior to the Closing or by Buyer's decision not to hire previous employees of Seller;

(f) any Employee Plan established or maintained by Seller; or

(g) any Retained Liabilities.

Notwithstanding anything contained in this Agreement to the contrary, the Buyer will not have the right to sue the Seller for Damages which result form a defect in the title to the Real Property obtained by the Buyer pursuant to this Agreement for which there is applicable title insurance pursuant to Section 5.9 hereof and on which a claim may be made by the Buyer for the relevant Damages unless (a) the Buyer has filed a claim under the relevant title insurance policy and the claim has not been allowed within 90 days of the date the claim was filed or (b) the Buyer has filed a claim under the relevant title insurance policy, the claim was allowed within 90 days after the filing of the claim but the processing or defending (or the taking of other relevant action in accordance with the claim by the Title Insurer) is not proceeding in a satisfactory manner as determined by the Buyer in the exercise of its reasonable judgment.

11.3 Indemnification and Reimbursement by Seller--Environmental Matters

In addition to the other indemnification provisions in this Article 11, Seller will indemnify and hold harmless Buyer and the other Buyer indemnified Persons, and will reimburse Buyer and the other Buyer Indemnified Persons, for any Damages (including costs of cleanup, containment or other remediation) arising from or in connection with:

(a) any Environmental, Health and Safety Liabilities arising out of or relating to: (i) the ownership or operation by any Person at any time on or prior to the Closing Date of any of the Facilities, assets or the business of Seller, or (ii) any Hazardous Materials or other contaminants that were present on the Facilities or Assets at any time on or prior to the Closing Date; or

(b) any bodily injury (including illness, disability and death, regardless of when any such bodily injury occurred, was incurred or manifested itself), personal injury, property damage (including trespass, nuisance, wrongful eviction and deprivation of the use of real property) or other damage of or to any Person or any Assets in any way arising from or allegedly arising from any Hazardous Activity conducted by any Person

with respect to the business of Seller or the Assets prior to the Closing Date or from any Hazardous Material that was (i) present on or before the Closing Date on or at the Facilities (or present on any other property, if such Hazardous Material emanated or allegedly emanated from any Facility and was present on any Facility, on or prior to the Closing Date) or (ii) Released or allegedly Released by any Person on or at any Facilities or Assets at any time on or prior to the Closing Date.

Buyer, with Seller's consent and approval which shall not be unreasonably withheld will be entitled to control any Remedial Action, any Proceeding relating to an Environmental Claim and, except as provided in the following sentence, any other Proceeding with respect to which indemnity may be sought under this Section 11.3. The procedure described in Section 11.9 will apply to any claim solely for monetary damages relating to a matter covered by this Section 11.3.

No claim for environmental indemnification or reimbursement may be asserted unless the underlying environmental condition is (i) specifically identified in Exhibit 3.13 or (ii) the party asserting the claim establishes that the conditions, release, disposal or actions giving rise to the liability or claim were present at or prior to Closing and that the party asserting the claim did not materially cause or contribute to such conditions after Closing.

11.4 Indemnification and Reimbursement by Buyer

Buyer will indemnify and hold harmless Seller, and will reimburse Seller, for any Damages arising from or in connection with:

(a) any Breach of any representation or warranty made by Buyer in this Agreement or in any certificate, document, writing or instrument delivered by Buyer pursuant to this Agreement;

(b) any Breach of any covenant or obligation of Buyer in this Agreement or in any other certificate, document, writing or instrument delivered by Buyer pursuant to this Agreement;

(c) any claim by any Person for brokerage or finder's fees or commissions or similar payments based upon any agreement or understanding alleged to have been made by such Person with Buyer (or any Person acting on Buyer's behalf) in connection with any of the Contemplated Transactions; or

(d) any Assumed Liabilities.

11.5 Limitations on Amount--Seller

Seller shall have no liability (for indemnification or otherwise) with respect to claims under Section 11.2(a) until the total of all Damages with respect to such matters exceeds $500,000 and then only for the amount by which such Damages exceed $500,000. However, this Section 11.5 will not apply to claims under (the following, each an "Exempted Breach") Section 11.2(b) through (h) or to matters arising in respect of Sections 3.7, 3.13, or 3.15 to any Breach of any of Seller's representations and warranties of which the Seller had Knowledge at any time prior to the date on which such representation and warranty is made or any Breach by Seller of any covenant or obligation. Notwithstanding the foregoing, the Seller shall not be liable for Minor Claims (as hereinafter defined) until such Minor Claims aggregate more than $500,000 in which case, Seller shall be liable for all Minor Claims to the extent that in the aggregate they exceed $500,000 provided that Damages in aggregate exceed $500,000. "Minor Claim" means Damages resulting from a Breach hereof covered by Section 11.2(a) (other than an Exempted Breach) that do not exceed $20,000.00.

11.6 Limitations on Amount--Buyer

Buyer will have no liability (for indemnification or otherwise) with respect to claims under Section 11.4(a) until the total of all Damages with respect to such matters exceeds $500,000 and then only for the amount by which such Damages exceed $500,000. However, this Section 11.6 will not apply to claims under Section 11.4(b) through (e) or matters arising in respect of Section 4.4 or to any Breach of any of Buyer's representations and warranties of which Buyer had Knowledge at any time prior to the date on which such representation and warranty is made or any Breach by Buyer of any covenant or obligation, and Buyer will be liable for all Damages with respect to such Breaches.

11.7 Time Limitations

(a) If the Closing occurs, Seller will have liability (for indemnification or otherwise) with respect to any Breach of (i) a covenant or obligation to be performed or complied with prior to the Closing Date (other than those in Sections 2.1 and 2.4(b) and Articles 10 and 12, as to which a claim may be made at any time, or (ii) a representation or warranty (other than one contained in Section 3.12 or 3.13 hereof) only if on or before three years after the Closing Date, Buyer notifies Seller of a claim specifying the factual basis of the claim in reasonable detail to the extent then known by Buyer. If the Closing occurs, Seller will have liability (for indemnification or otherwise) with respect to any Breach of the representations and warranties contained in Section 3.12 or 3.13 hereof only if on or before five years after the Closing Date, the Buyer notifies Seller of a claim specifying the factual basis of the claim in reasonable detail to the extent then known by Buyer.

(b) If the Closing occurs, Buyer will have liability (for indemnification or otherwise) with respect to any Breach of (i) a covenant or obligation to be performed or complied with prior to the Closing Date (other than those in Article 12, as to which a claim may be made at any time) or (ii) a representation or warranty (other than that set forth in Section 4.4, as to which a claim may be made at any time), only if on or before three years after the Closing Date, Seller notifies Buyer of a claim specifying the factual basis of the claim in reasonable detail to the extent then known by Seller.

11.8 Right Of Setoff

Upon notice to Seller specifying in reasonable detail the basis therefor, Buyer may set off any amount to which it may be entitled under this Article 11 against amounts otherwise payable to Seller, subject to Seller's right to object under the Dispute Resolution Process. The exercise of such right of setoff by Buyer in good faith, whether or not ultimately determined to be justified, will not constitute an event of default. Neither the exercise of nor the failure to exercise such right of setoff or to give a notice of a claim under the Escrow Agreement will constitute an election of remedies or limit Buyer in any manner in the enforcement of any other remedies that may be available to it.

11.9 Third-Party Claims

(a) Promptly after receipt by a Person entitled to indemnity under Section 11.2, 11.3 (to the extent provided in the last sentence of Section 11.3) or 11.4 (an "Indemnified Person") of notice of the assertion of a Third-Party Claim against it, such Indemnified Person shall give notice to the Person obligated to indemnify under such Section (an "Indemnifying Person") of the assertion of such Third-Party Claim, provided that the failure to notify the Indemnifying Person will not relieve the Indemnifying Person of any liability that it may have to any Indemnified Person, except to the extent that the Indemnifying Person demonstrates that the defense of such Third-Party Claim is prejudiced by the Indemnified Person's failure to give such notice.

(b) If an Indemnified Person gives notice to the Indemnifying Person pursuant to Section 11.9(a) of the assertion of a Third-Party Claim, the Indemnifying Person shall be entitled to participate in the defense of such Third-Party Claim and, to the extent that it wishes (unless (i) the Indemnifying Person is also a Person against whom the Third-Party Claim is made and the Indemnified Person determines in good faith that joint representation would be inappropriate or (ii) the Indemnifying Person fails to provide reasonable assurance to the Indemnified Person of its financial capacity to defend such Third-Party Claim and provide indemnification with respect to such Third-Party Claim), to assume the defense of such Third-Party Claim with counsel satisfactory to the Indemnified Person. After notice from the Indemnifying Person to the Indemnified Person of its election to assume the defense of such Third-Party Claim, the Indemnifying Person shall not, so long as it diligently conducts such defense, be liable to the

Indemnified Person under this Article 11 for any fees of other counsel or any other expenses with respect to the defense of such Third-Party Claim, in each case subsequently incurred by the Indemnified Person in connection with the defense of such Third-Party Claim, other than reasonable costs of investigation. If the Indemnifying Person assumes the defense of a Third-Party Claim, (i) such assumption will conclusively establish for purposes of this Agreement that the claims made in that Third-Party Claim are within the scope of and subject to indemnification, and (ii) no compromise or settlement of such Third-Party Claims may be effected by the Indemnifying Person without the Indemnified Person's Consent unless (A) there is no finding or admission of any violation of Legal Requirement or any violation of the rights of any Person; (B) the sole relief provided is monetary damages that are paid in full by the Indemnifying Person; and (C) the Indemnified Person shall have no liability with respect to any compromise or settlement of such Third-Party Claims effected without its Consent. If notice is given to an Indemnifying Person of the assertion of any Third-Party Claim and the Indemnifying Person does not, within ten (10) days after the Indemnified Person's notice is given, give notice to the Indemnified Person of its election to assume the defense of such Third-Party Claim, the Indemnifying Person will be bound by any determination made in such Third-Party Claim or any compromise or settlement effected by the Indemnified Person.

(c) Notwithstanding the foregoing, if an Indemnified Person determines in good faith that there is a reasonable probability that a Third-Party Claim may adversely affect it or its Related Persons other than as a result of monetary damages for which it would be entitled to indemnification under this Agreement, the Indemnified Person may, by notice to the Indemnifying Person, assume the exclusive right to defend, compromise or settle such Third-Party Claim, but the Indemnifying Person will not be bound by any determination of any Third-Party Claim so defended for the purposes of this Agreement or any compromise or settlement effected without its Consent (which may not be unreasonably withheld).

(d) Notwithstanding the provisions of Section 13.4, Seller and each Shareholder hereby consent to the nonexclusive jurisdiction of any court in which a Proceeding in respect of a Third-Party Claim is brought against any Buyer Indemnified Person for purposes of any claim that a Buyer Indemnified Person may have under this Agreement with respect to such Proceeding or the matters alleged therein and agree that process may be served on Seller and Shareholders with respect to such a claim anywhere in the world.

(e) With respect to any Third-Party Claim subject to indemnification under this Article 11: (i) both the Indemnified Person and the Indemnifying Person, as the case may be, shall keep the other Person fully informed of the status of such Third-Party Claim and any related Proceedings at all stages thereof where such Person is not represented by its own counsel, and (ii) the parties agree (each at its own expense) to render to each other such assistance as they may reasonably require of each other and to

cooperate in good faith with each other in order to ensure the proper and adequate defense of any Third-Party Claim.

(f) With respect to any Third-Party Claim subject to indemnification under this Article 11, the parties agree to cooperate in such a manner as to preserve in full (to the extent possible) the confidentiality of all Confidential Information and the attorney-client and work-product privileges. In connection therewith, each party agrees that: (i) it will use its Best Efforts, in respect of any Third-Party Claim in which it has assumed or participated in the defense, to avoid production of Confidential Information (consistent with applicable law and rules of procedure), and (ii) all communications between any party hereto and counsel responsible for or participating in the defense of any Third-Party Claim shall, to the extent possible, be made so as to preserve any applicable attorney-client or work-product privilege.

11.10 Other Claims

A claim for indemnification for any matter not involving a Third-Party Claim may be asserted by notice to the party from whom indemnification is sought and shall be paid promptly after such notice, subject to filing an objection under the Dispute Resolution Process.

11.11 Buyer Benefit

Upon any termination of this Agreement that would entitle the Buyer to recover the benefit of its bargain with the Seller, the Buyer and Seller agree that the value of the benefit of the bargain is speculative, is not readily subject to determination objectively and agree that the value of the benefit of the bargain to the Buyer is $5 Million, plus an amount equal to all transaction costs which the Buyer would have paid if the Closing and issuance of the Acquisition Bonds had taken place.

12. Confidentiality

12.1 Definition of Confidential Information

(a) As used in this Article 12, the term "Confidential Information" includes any and all of the following information of Seller or Buyer that has been or may hereafter be disclosed in any form, whether in writing, orally, electronically or otherwise, or otherwise made available by observation, inspection or otherwise by either party (Buyer on the one hand or Seller, on the other hand) or its Representatives (collectively, a "Disclosing Party") to the other party or its Representatives (collectively, a "Receiving Party"):

(i) all information that is a trade secret under applicable trade secret or other law;

(ii) all information concerning product specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, past, current and planned research and development, current and planned manufacturing or distribution methods and processes, customer lists, current and anticipated customer requirements, price lists, market studies, business plans, computer hardware, Software and computer software and database technologies, systems, structures and architectures;

(iii) all information concerning the business and affairs of the Disclosing Party (which includes historical and current financial statements, financial projections and budgets, tax returns and accountants' materials, historical, current and projected sales, capital spending budgets and plans, business plans, strategic plans, marketing and advertising plans, publications, client and customer lists and files, contracts, the names and backgrounds of key personnel and personnel training techniques and materials, however documented), and all information obtained from review of the Disclosing Party's documents or property or discussions with the Disclosing Party regardless of the form of the communication; and

(iv) all notes, analyses, compilations, studies, summaries and other material prepared by the Receiving Party to the extent containing or based, in whole or in part, upon any information included in the foregoing.

(b) Any trade secrets of a Disclosing Party shall also be entitled to all of the protections and benefits under applicable trade secret law and any other applicable law. If any information that a Disclosing Party deems to be a trade secret is found by a court of competent jurisdiction not to be a trade secret for purposes of this Article 12, such information shall still be considered Confidential Information of that Disclosing Party for purposes of this Article 12 to the extent included within the definition. In the case of trade secrets, each of Buyer and Seller hereby waives any requirement that the other party submit proof of the economic value of any trade secret or post a bond or other security.

12.2 Restricted Use of Confidential Information

(a) Each Receiving Party acknowledges the confidential and proprietary nature of the Confidential Information of the Disclosing Party and agrees that such Confidential Information (i) shall be kept confidential by the Receiving Party; (ii) shall not be used for any reason or purpose other than to evaluate and consummate the Contemplated Transactions; and (iii) without limiting the foregoing, shall not be disclosed by the Receiving Party to any Person, except in each case as otherwise expressly permitted by the terms of this Agreement or with the prior written consent of an authorized representative of Seller with respect to Confidential Information of Seller (each, a "Seller Contact") or an authorized representative of Buyer with respect to Confidential Information of Buyer (each, a "Buyer Contact"). Each of Buyer and Seller

shall disclose the Confidential Information of the other party only to its Representatives who require such material for the purpose of evaluating the Contemplated Transactions and are informed by Buyer or Seller as the case may be, of the obligations of this Article 12 with respect to such information. Each of Buyer and Seller shall (iv) enforce the terms of this Article 12 as to its respective Representatives; (v) take such action to the extent necessary to cause its Representatives to comply with the terms and conditions of this Article 12; and (vi) be responsible and liable for any breach of the provisions of this Article 12 by it or its Representatives.

(b) Unless and until this Agreement is terminated, Seller shall maintain as confidential any Confidential Information (including for this purpose any information of Seller of the type referred to in Sections 12.1(a)(i), (ii) and (iii), whether or not disclosed to Buyer) of the Seller relating to any of the Assets or the Assumed Liabilities. Notwithstanding the preceding sentence, Seller may use any Confidential Information of Seller before the Closing in the Ordinary Course of Business in connection with the transactions permitted by Section 5.2.

(c) From and after the Closing, the provisions of Section 12.2(a) above shall not apply to or restrict in any manner Buyer's use of any Confidential Information of the Seller relating to any of the Assets or the Assumed Liabilities.

12.3 Exceptions

Sections 12.2(a) and (b) do not apply to that part of the Confidential Information of a Disclosing Party that a Receiving Party demonstrates (a) was, is or becomes generally available to the public other than as a result of a breach of this Article 12 or the Confidentiality Agreement by the Receiving Party or its Representatives; (b) was or is developed by the Receiving Party independently of and without reference to any Confidential Information of the Disclosing Party; or (c) was, is or becomes available to the Receiving Party on a nonconfidential basis from a Third Party not bound by a confidentiality agreement or any legal, fiduciary or other obligation restricting disclosure. Seller shall not disclose any Confidential Information of Seller relating to any of the Assets or the Assumed Liabilities in reliance on the exceptions in clauses (b) or (c) above.

12.4 Legal Proceedings

If a Receiving Party becomes compelled in any Proceeding or is requested by a Governmental Body having regulatory jurisdiction over the Contemplated Transactions to make any disclosure that is prohibited or otherwise constrained by this Article 12, that Receiving Party shall provide the Disclosing Party with prompt notice of such compulsion or request so that it may seek an appropriate protective order or other appropriate remedy or waive compliance with the provisions of this Article 12. In the absence of a protective order or other remedy, the Receiving Party may disclose that

portion (and only that portion) of the Confidential Information of the Disclosing Party that, based upon advice of the Receiving Party's counsel, the Receiving Party is legally compelled to disclose or that has been requested by such Governmental Body, provided, however, that the Receiving Party shall use reasonable efforts to obtain reliable assurance that confidential treatment will be accorded by any Person to whom any Confidential Information is so disclosed. The provisions of this Section 12.4 do not apply to any Proceedings between the parties to this Agreement.

12.5 Return or Destruction of Confidential Information

If this Agreement is terminated, each Receiving Party shall (a) destroy all Confidential Information of the Disclosing Party prepared or generated by the Receiving Party without retaining a copy of any such material; (b) promptly deliver to the Disclosing Party all other Confidential Information of the Disclosing Party, together with all copies thereof, in the possession, custody or control of the Receiving Party or, alternatively, with the written consent of a Seller Contact or a Buyer Contact (whichever represents the Disclosing Party) destroy all such Confidential Information; and (c) certify all such destruction in writing to the Disclosing Party, provided, however, that the Receiving Party may retain a list that contains general descriptions of the information it has returned or destroyed to facilitate the resolution of any controversies after the Disclosing Party's Confidential Information is returned.

12.6 Attorney-Client Privilege

The Disclosing Party is not waiving, and will not be deemed to have waived or diminished, any of its attorney work product protections, attorney-client privileges or similar protections and privileges as a result of disclosing its Confidential Information (including Confidential Information related to pending or threatened litigation) to the Receiving Party, regardless of whether the Disclosing Party has asserted, or is or may be entitled to assert, such privileges and protections. The parties (a) share a common legal and commercial interest in all of the Disclosing Party's Confidential Information that is subject to such privileges and protections; (b) are or may become joint defendants in Proceedings to which the Disclosing Party's Confidential Information covered by such protections and privileges relates; (c) intend that such privileges and protections remain intact should either party become subject to any actual or threatened Proceeding to which the Disclosing Party's Confidential Information covered by such protections and privileges relates; and (d) intend that after the Closing the Receiving Party shall have the right to assert such protections and privileges. No Receiving Party shall admit, claim or contend, in Proceedings involving either party or otherwise, that any Disclosing Party waived any of its attorney work-product protections, attorney-client privileges or similar protections and privileges with respect to any information, documents or other material not disclosed to a Receiving Party due to the Disclosing Party disclosing its Confidential Information (including Confidential Information related to pending or threatened litigation) to the Receiving Party.

13. General Provisions

13.1 Expenses

Except as otherwise provided in this Agreement, each party to this Agreement will bear its respective fees and expenses incurred in connection with the preparation, negotiation, execution and performance of this Agreement and the Contemplated Transactions, including all fees and expense of its Representatives. Seller will pay all amounts payable to the Title Insurer in respect of the Title Commitments, copies of exceptions and the Title Policy, including premiums (including premiums for endorsements) and search fees. If this Agreement is terminated, the obligation of each party to pay its own fees and expenses will be subject to any rights of such party arising from a Breach of this Agreement by another party.

13.2 Public Announcements

Any public announcement, press release or similar publicity with respect to this Agreement or the Contemplated Transactions will be issued, if at all, at such time and in such manner as Seller determines. Except with the prior consent of Seller or as permitted by this Agreement, Buyer nor any of its Representatives shall disclose to any Person (a) the fact that any Confidential Information of Seller has been disclosed to Buyer or its Representatives, that Buyer or its Representatives have inspected any portion of the Confidential Information of Seller, that any Confidential Information of Buyer has been disclosed to Seller or their Representatives or that Seller or its Representatives have inspected any portion of the Confidential Information of Buyer or (b) any information about the Contemplated Transactions, including the status of such discussions or negotiations, the execution of any documents (including this Agreement) or any of the terms of the Contemplated Transactions or the related documents (including this Agreement). Seller and Buyer will consult with each other concerning the means by which Seller's employees, customers, suppliers and others having dealings with Seller will be informed of the Contemplated Transactions, and Buyer will have the right to be present for any such communication.

13.3 Notices

All notices, Consents, waivers and other communications required or permitted by this Agreement shall be in writing and shall be deemed given to a party when (a) delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid); (b) sent by facsimile or e-mail with confirmation of transmission by the transmitting equipment; or (c) received or rejected by the addressee, if sent by certified mail, return receipt requested, in each case to the following addresses, facsimile numbers or e-mail addresses and marked to the attention of the person (by name or title) designated below (or to such other address, facsimile number, e-mail address or person as a party may designate by notice to the other parties):

Seller (before the Closing):	1000 Color Place Apopka, FL 32703 Attention: Donnie Crandall, CEO Fax: (407) 598-4219
with a mandatory copy to:	Florida Water Services Corporation 1000 Color Place Apopka, FL 32703 Attention: Carlyn Kowalsky, General Counsel Fax: (407) 598-4241 E-mail: carlynk@florida-water.com Greenberg Traurig, P.A. 777 South Flagler Drive, Suite 300 East West Palm Beach, Florida 33401 Attention: Phillip C. Gildan Fax: (561) 838-8867 E-mail: gildanp@gtlaw.com
Seller (after the Closing):	Philip R. Halverson VP/General Counsel 30 West Superior Street Duluth, MN 55802 Fax: (218) 723-3960 E-mail: phalverson@allete.com
Buyer:	J. Lance Reese, Chairman Florida Water Services Authority E-mail: cacagms@aol.com
with a mandatory copy to:	Miller, Canfield, Paddock and Stone, PLC Attention: Richard I. Lott Fax: (850) 469-1088 E-mail: rilott@prodigy.net

13.4 Jurisdiction; Service of Process

Any Proceeding arising out of or relating to this Agreement or any Contemplated Transaction may be brought in the courts of the State of Florida, County of Escambia, or, if it has or can acquire jurisdiction, in the United States District Court for the Northern District of Florida, and each of the parties irrevocably submits to the exclusive jurisdiction of each such court in any such Proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the Proceeding shall be heard and determined only in any such court and agrees not to bring any Proceeding arising out of or relating to this Agreement or any Contemplated Transaction in any other court. The parties agree that either or both of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and bargained agreement between the parties irrevocably to waive any objections to venue or to convenience of forum. Process in any Proceeding referred to in the first sentence of this section may be served on any party anywhere in the world.

13.5 Enforcement of Agreement

(a) Notwithstanding any other provision in this Agreement, any dispute among the parties which arises from the Agreement shall be resolved by binding arbitration conducted in accordance with this Section 13.5. (the "Dispute Resolution Process") Either party may initiate the Dispute Resolution Process by providing written notice to the other party.

(b) After transmittal and receipt of a written notice specifying the area or areas of disagreement or dispute, the parties agree to meet at reasonable times and places, as mutually agreed upon, to discuss the issues.

(c) If discussions between the parties fail to resolve the dispute within fifteen (15) business days of the receipt by each party of the notice described in subsection (a) of this Section 13.5, a binding arbitration may then be initiated by either party by written notification to the other party of the existence of a dispute. Any and all issues related to the matter addressed by the written notice provided in subsection (a) of Section 13.5 or any response by the other party shall be raised and resolved in a single proceeding.

(d) The arbitrators shall be appointed and act as follows: (1) Each party shall appoint a person as arbitrator within ten (10) business days of the date one of the parties has notified the other of the existence of a dispute; (2) Each appointment shall be signified in writing to the counter party and the arbitrators so appointed, within ten (10) days of their acceptance of appointment, shall appoint a third arbitrator, who shall chair the panel. If the arbitrators appointed by the parties are unable to agree upon a third arbitrator, the same shall be appointed by the American Arbitration Association from its qualified panel of arbitrators. Each party shall have the right to veto up to two

appointments proposed by the American Arbitration Association. If either party fails to appoint an arbitrator within ten (10) business days from the date one of the parties has notified the other of the existence of a dispute, then an arbitrator shall be appointed by the American Arbitration Association from its qualified panel of arbitrators as the appointment of the party failing to timely appoint and the two so appointed shall appoint a third arbitrator to chair the panel. The party on whose behalf an arbitrator is appointed shall have the right to veto up to two of the arbitrators appointed by the American Arbitration Association; (3) Nothing in this Section 6.04 shall preclude the parties from mutually agreeing to a single arbitrator to resolve the dispute; (4) No arbitrator shall have a business or other pecuniary relationship with either party, except for payment of arbitrator's fees and expenses without the written consent of both parties.

(e) Arbitrators shall be sworn to perform their duties with impartiality and fidelity. In rendering any decision, the arbitrator shall proceed to consider the Agreement, the dispute identified in the notice and any response and the actions taken and the documentation thereof, conduct, and relative position, knowledge, and the ability of the parties in relation to the dispute.

(f) The arbitration hearing shall convene not earlier than sixty (60) days and not later than ninety (90) days of the acceptance of appointment of all of the arbitrators chosen by the parties unless the parties mutually agree to an earlier date. The arbitrators shall render a decision within ten (10) business days of the date on which the arbitration hearing concludes, and such decisions shall be in writing and in duplicate, one counterpart thereof to be delivered simultaneously to each of the parties. The decision shall contain findings of fact and conclusions of law and shall be final and binding upon the parties.

(g) The parties shall be entitled to discovery pursuant to the Florida Rules of Civil Procedure. All discovery requests by a party shall be enforced by the arbitrators. The arbitration hearing shall not proceed until all outstanding discovery requests have been fulfilled.

(h) The fees, charges and expenses of the arbitrators, any experts engaged by the arbitrators, the respective counsel engaged by the parties, and any witnesses called by the parties shall be paid as follows: the arbitrators shall order each party to pay their own fees, charges and expenses and assess the fees, charges and expenses of the arbitrators equally between the parties.

(i) The provisions of the Florida Arbitration Code, Chapter 682, Florida Statutes, and the Florida Evidence Code, Chapter 90, Florida Statutes, except to the extent inconsistent with the provisions of this Agreement, shall specifically be deemed to apply to any arbitration proceeding conducted hereunder. Unless the venue is mutually agreed upon otherwise by the parties, the venue for any arbitration commenced pursuant to this Section shall be in Pensacola, Florida.

13.6 Waiver; Remedies Cumulative

The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither any failure nor any delay by any party in exercising any right, power or privilege under this Agreement or any of the documents referred to in this Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law, (a) no claim or right arising out of this Agreement or any of the documents referred to in this Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other party; (b) no waiver that may be given by a party will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on one party will be deemed to be a waiver of any obligation of that party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the documents referred to in this Agreement.

13.7 Entire Agreement and Modification

This Agreement supersedes all prior agreements, whether written or oral, between the parties with respect to its subject matter (including any letter of intent and any confidentiality agreement between Buyer and Seller) and constitutes (along with the Disclosure Letter, Exhibits and other documents delivered pursuant to this Agreement) a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. This Agreement may not be amended, supplemented, or otherwise modified except by a written agreement executed by the party to be charged with the amendment.

13.8 Assignments, Successors and no Third-Party Rights

No party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other parties, except that Buyer may collaterally assign its rights hereunder to any financial institution providing financing in connection with the Contemplated Transactions. Subject to the preceding sentence, this Agreement will apply to, be binding in all respects upon and inure to the benefit of the successors and permitted assigns of the parties. Nothing expressed or referred to in this Agreement will be construed to give any Person other than the parties to this Agreement any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement, except such rights as shall inure to a successor or permitted assignee pursuant to this Section 13.8.

13.9 Severability

If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

13.10 Construction

The headings of Articles and Sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All references to "Articles," and "Sections" refer to the corresponding Articles and Sections of this Agreement.

13.11 Time of Essence

With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

13.12 Governing Law

This Agreement will be governed by and construed under the laws of the State of Florida without regard to conflicts-of-laws principles that would require the application of any other law.

13.13 Execution of Agreement

This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile shall be deemed to be their original signatures for all purposes.

13.14 Due Diligence.

This Agreement is being executed without all of its schedules and Exhibits being attached. As to the foregoing which are documents, the parties hereto agree to negotiate in good faith to finalize the form thereof on or before the Due Diligence Date (as hereinafter defined). As to the Schedules and other exhibits, all non-attached schedules and exhibits are to be prepared by the Seller. During the course of preparing such schedules and exhibits, the Seller will give to the Buyer drafts thereof as developed and supply to Buyer such information, and permit the Buyer to conduct such due diligence, in connection therewith as Buyer shall reasonably request. In addition, Seller

acknowledges that Buyer has not conducted the due diligence that Buyer desires to conduct prior to consummating the transactions contemplated hereby. Consequently, at such time as Seller completes the schedules and exhibits it is required to complete to be attached hereto, it shall deliver to Buyer a complete set thereof with a written notice stating that the schedules and exhibits so delivered are the final schedules and exhibits hereto that it is required to complete and deliver. The date of the foregoing, the "Exhibit Delivery Date". If the Exhibit Delivery Date has not occurred on or prior to thirty days after the date hereof or, if they are so delivered prior thereto but the Buyer in the exercise of its reasonable discretion is not satisfied with the substance thereof, the Buyer shall have the right to terminate this Agreement except that the Seller shall immediately pay to the Buyer the Due Diligence Expenses. The Buyer agrees that it will in good faith seek to accomplish its due diligence on or before six (6) weeks after the Exhibit Delivery Date. When it has completed its due diligence, it shall notify the Seller. If the Buyer is not satisfied in its reasonable discretion with the results of its due diligence, then the Buyer may terminate this Agreement except that the Seller shall immediately pay to the Buyer the Due Diligence Expenses. If the Buyer has not completed its due diligence within the aforesaid time, then the Seller may terminate this Agreement or if the expenses of the Buyer in conducting its due diligence are reasonably projected by Buyer at any time to exceed $150,000 and the Seller refuses to approve the reasonable projected amount over $150,000 as Due Diligence Expenses as defined herein and subject to reimbursement by the Seller, then the Buyer may terminate this Agreement, and, in each case, the Seller shall pay to the Buyer the Due Diligence Expense.

13.15 Radon Gas.

(a) RADON IS NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL AND STATE GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN FLORIDA. ADDITIONAL INFORMATION REGARDING RADON TESTING MAY BE OBTAINED FROM THE COUNTY PUBLIC HEALTH UNIT.

13.16 Limited Liability.

Neither the State of Florida nor any political subdivision or municipality thereof, nor the Buyer, shall be obligated (1) to exercise its ad valorem taxing power or any other taxing power in any form on any real or personal property to pay any liability arising out of, or in any connection whatsoever with, this Agreement, or to pay the principal of the Acquistion Bonds, the interest thereon or other costs incident thereto or (2) to pay the same from any other funds, except from the Net Revenues realized by the Buyer from its ownership or operation of the System, junior and subordinate to the payment of any Bonds or other indebtedness payable from such source. It is further agreed between the

Buyer and the Seller that this Agreement and any obligations arising in connection therewith, whether for payment of the Purchase Price, or for any claim of liability, remedy for breach, or otherwise, shall not constitute a lien on the System or any other property of the Authority, or any municipality, but shall constitute a lien only on the Pledged Revenues, in the manner provided in this Agreement.

Notwithstanding anything to the contrary contained herein or in any other instrument or document executed by or on behalf of the Buyer in connection herewith, no stipulation, covenant, agreement or obligation contained herein or therein shall be deemed or construed to be a stipulation, covenant, agreement, or obligation of any present or future member, officer, employee or agent of the Buyer, or of any incorporator, member, director, trustee, officer, employee or agent of any successor to the Buyer, in any such person's individual capacity, and no such person, in his individual capacity, shall be liable personally for any breach or non-observance of or for any failure to perform, fulfill or comply with any such stipulations, covenants, agreements or obligations, nor shall any recourse be had for the payment of the principal of, premium, if any, or interest on any of the Bonds or for any claim based thereon or on any such stipulation, covenant, agreement, or obligation, against any such person, in his individual capacity, either directly or through the Buyer or any successor to the Buyer, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such person, in his individual capacity, is hereby expressly waived and released. All references to the Buyer in this paragraph shall be deemed to include the Buyer, the City of Gulf Breeze, the City of Milton, their respective Mayors, Council Members, officers, employees, and agents.

The Buyer shall not be obligated to pay any liability, claim or obligation arising from or in connection with this Agreement or the transactions contemplated thereby, or any bonds or the interest thereon, from any funds of the Buyer derived from any source other than the Pledged Revenues, junior and subordinate the payment of the bonds secured by such Pledged Revenues. The Seller hereby agrees to indemnify and defend the Buyer and hold the Buyer harmless against any and all claims, losses liabilities or damages in any way growing out of or resulting from challenges to this Agreement or objections to the Authority to complete the contemplated transactions to the prior to closing, including, without limitation, all costs and expenses of the Buyer, including reasonable attorney's fees, incurred in the performance of any activities of the Buyer in connection with the foregoing. All references to the Buyer in this paragraph shall be deemed to include the Buyer, the City of Gulf Breeze, the City of Milton, their respective Mayors, Council Members, officers, employees, and agents.

Nothing herein shall be deemed to authorize, create or impose upon the City of Gulf Breeze or the City of Milton any obligation, duty, liability or responsibility for the taking of or refraining from any action, or for the payment of any sums for any reason whatsoever. The Seller hereby acknowledges that the City of Gulf Breeze and the City of

Milton shall have no liability whatsoever on account of this Agreement or the transactions contemplated hereby, including, without limitation, any claims or liabilities arising on account of any breach, misrepresentation or other action or failure to act on the part of the Buyer. The Seller hereby covenants and agrees that it will never seek remedy or recourse against, or seek to impose any liability upon, the City of Gulf Breeze or City of Milton, for any liability or claim arising in connection with or relating to this Agreement or the transactions contemplated thereby, whether against the Buyer, the Cities of Gulf Breeze or Milton directly, or otherwise, under any rule of law or equity, statute or constitution or by the enforcement of any provision of this Agreement, or by way of assessment or penalty or otherwise; and all such liability of any such entities is hereby expressly waived and released.

If, prior to closing, the Seller shall determine that, because of its indemnity obligations of clause (ii) of the preceding paragraph is no longer economically feasible to pursue to the Closing or the transaction contemplated hereby, Seller may elect to give written notice to the Buyer that it no longer wishes to complete the Closing transaction. Upon receipt of such notice, Buyer may elect to proceed with the Closing without such indemnity under said clause (ii) (in which case the Seller shall be excused from any further indemnity obligation under said clause (ii)), or to terminate its obligations hereunder (in which case the Seller shall be liable for Liquidated Damages).

The provisions of this Section shall survive the termination of this Agreement.

13.17 Obligations Subordinate.

All obligations of the Buyer hereunder or arising in connection therewith (the "Utility Acquisition Liabilities" or "UA Liabilities") shall be limited and special obligations of the Buyer, payable solely from the Net Revenues, junior and subordinate to the outstanding Bonds of the Authority. The UA Liabilities shall not be or constitute a general indebtedness, liability, general or moral obligation, or a pledge of the faith, credit or taxing power of the Buyer, the State of Florida, or any political subdivision or municipal corporation thereof, within the meaning of any constitutional or statutory provision or limitation. Neither the State of Florida nor any political subdivision or municipal corporation thereof, nor the Buyer shall be obligated (1) to levy ad valorem taxes on any property to pay the UA Liabilities or other costs incident thereto or (2) to pay the same from any other funds of the Buyer, except from the Net Revenues, junior and subordinate to the outstanding Bonds of the Authority. It is further agreed between the Buyer and the Seller that the UA Liabilities shall not constitute a lien upon the System or facilities, or any part thereof, or on any other property of the Buyer, but shall constitute a lien only on the Net Revenues, junior and subordinate to the outstanding Bonds of the Authority.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

Buyer: Florida Water Services Authority

By: Lance Rees

Its: Chairman

Seller: FLORIDA WATER SERVICES CORPORATION

By: Donnie R. Sanders

Its: PRESIDENT

AMENDMENT AND RESTATEMENT
OF

ASSET PURCHASE AGREEMENT

by and between

FLORIDA WATER SERVICES CORPORATION

and

FLORIDA WATER SERVICES AUTHORITY

Dated as of December 20, 2002

EXHIBIT "B"

AMENDMENT AND RESTATEMENT OF ASSET PURCHASE AGREEMENT

This Amendment and Restatement of Asset Purchase Agreement is dated as of December 20, 2002, by and between Florida Water Services Authority, a public entity of the State of Florida ("Buyer"), and Florida Water Services Corporation, a Florida corporation ("Seller").

RECITALS

WHEREAS, Seller and Buyer did enter into a certain Asset Purchase Agreement dated as of September 19, 2002 (the "Original Agreement") and wish to amend and restate it in its entirety (other than the Preambles thereto) (the Original Agreement as amended and restated hereby, the "Agreement");

WHEREAS, Seller owns potable water production, supply, treatment, and distribution systems, alternative water systems, wastewater collection, transmission, treatment and disposal systems, and reclaimed water facilities in various incorporated and unincorporated areas in Florida (the "System," as hereinafter defined); and

WHEREAS, Buyer, pursuant to Chapter 163, Florida Statutes, and the Interlocal Agreement dated as of September 16, 2002, creating Buyer (the "Interlocal Agreement") and other applicable laws, has the power and authority to acquire and provide potable water, wastewater, and reclaimed water facilities and to provide service outside of the boundaries of its participating members; and

WHEREAS, various governmental entities have threatened to condemn portions of System of the Seller, including portions of the water, wastewater and reclaimed water utility Facilities of the Seller, and in lieu of condemnation, Buyer desires to acquire all or substantially all of the assets which are used by Seller in providing services through the water, wastewater and reclaimed water Facilities throughout the State of Florida, and to avoid condemnation, Seller has consented to sell those assets to Buyer; and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, the Assets (as herein defined) of Seller for the consideration and on the terms and subject to the conditions set forth in this Agreement;

Now therefore, the parties, intending to be legally bound, do hereby amend and restate the Original Agreement so that it shall read in its entirety as follows:

1. Definitions and Usage

1.1 Definitions

For purposes of this Asset Purchase Agreement as amended and restated (the "Agreement"), the following terms and variations thereof have the meanings specified or referred to in this Section 1.1:

"Accounts Receivable"-- (a) all customer accounts receivable and other rights to payment from customers of Seller and the full benefit of all security for such accounts or rights to payment; (b) all other accounts or notes receivable of Seller and the full benefit of all security for such accounts or notes; and (c) any claim, remedy or other right related to any of the foregoing.

"Acquisition Bonds"-- means Bonds issued by the Buyer primarily for the purpose of paying the Purchase Price or installments thereof and anticipated to be in an aggregate amount sufficient to produce Acquisition Bond Net Proceeds in an amount equal to the Purchase Price.

"Acquisition Bonds Net Proceeds' -- means the amount received from the sale of Acquisition Bonds pursuant to subsection 2.3(E), less the costs of issuing the Bonds, less the amount required to fund the debt service reserve, and less $51,000,000 for the purpose of funding capital and renewal and replacement reserves (although it is not required to be so used). Installment 1 of the Purchase Price as set forth in subsection 2.3(A) will be automatically adjusted to equal the Acquisition Bonds Net Proceeds.

"AFPI" means allowance for funds prudently invested as such term is used by the Florida Public Service Commission.

"Appurtenances"-- all privileges, rights, easements, hereditaments and appurtenances belonging to or for the benefit of the Land, including all easements appurtenant to and for the benefit of any Land (a "Dominant Parcel") for, and as the primary means of access between, the Dominant Parcel and a public way, or for any other use upon which lawful use of the Dominant Parcel for the purposes for which it is presently being used is dependent, and all rights existing in and to any streets, alleys, passages and other rights-of-way included thereon or adjacent thereto (before or after vacation thereof) and vaults beneath any such streets.

"Assets" or "Assets to Be Sold"-- as defined in Section 2.1.

"Assignment and Assumption Agreement"-- as defined in Section 2.7(a)(ii).

"Assumed Liabilities"-- as defined in Section 2.4(a).

"Beck Reserve" – means the sum of $17,800,000 which the Buyer will be funding as a capital reserve in accordance with the Beck Schedule to provide funding for currently unidentified capital projects for the small utility systems as identified in the R.W. Beck Report dated as of December 18, 2002, as all systems not including the 14 largest systems as identified on Table 1 "14 Largest Systems" (the Small Systems") which capital projects may be identified by the Buyer from the date of Closing until September 30, 2007. Buyer shall notify Seller in writing of each Small System Project identified by Buyer and estimated cost for each such Small System Project. Disputes, if any, as to necessity, reasonableness and cost shall be resolved in accordance with Section 13.5. The Beck Reserve shall be invested by Buyer and interest earned on the Beck Reserve shall be credited to the Beck Reserve.

"Beck Schedule" – means the following maximum amounts per fiscal year for capital improvement to the Small Systems as contemplated by the R.W. Beck Report dated as of December 20, 2002: $3,162,000 for year ended 9/30/03 plus any additional money actually spent during that time period, $3,527,000 for year ended 9/30/04 plus any additional money actually spent during that time period, $3,555,000 for year ended 9/30/05 plus any additional money actually spent during that time period, $2,758,000 for year ended 9/30/06 plus any additional money actually spent during that time period, and $4,797,000 for fiscal year ended 9/30/07 plus any additional money actually spent during that time period.

"Best Efforts"-- the efforts that a prudent Person desirous of achieving a result would use in similar circumstances to achieve that result as expeditiously as possible, provided, however, that a Person required to use Best Efforts under this Agreement will not be thereby required to take actions that would result in a material adverse change in the benefits to such Person of this Agreement and the Contemplated Transactions or to dispose of or make any change to its business, expend any material funds or incur any other material burden.

"Bill of Sale"-- as defined in Section 2.7(a)(i).

"Bonds" shall mean revenue bonds, the interest on which (i) accrues at fixed rates and (ii) is excluded from gross income of the holder thereof for federal income tax purposes, to be issued by the Buyer and payable solely from and secured solely by the Net Revenues of the System and, if consented to by Buyer, other assets of the Buyer.

"Breach"-- any breach of, or any inaccuracy in, any representation or warranty or any breach of, or a failure to perform or comply with, any covenant or obligation, in or of this Agreement.

"Business Day"-- any day other than: (a) Saturday or Sunday; or (b) any other day on which banks in Florida are permitted or required to be closed.

"Buyer"-- as defined in the first paragraph of this Agreement.

"Buyer Indemnified Persons"-- as defined in Section 11.2.

"Capital Charges"- revenues, exclusive of Special Assessments, derived by the Buyer from impact fees, guaranteed revenues, service availability fees, or other such fees or charges, imposed upon landowners, builders or developers in connection with the Buyer improvement of property within the services areas of the System, to defray the costs of capital facilities.

"Capital Improvement Plan"---as defined in Section 2.3(c).

"Capital Improvement Plan Requirement"— an annual amount of $25,000,000 for the purpose of providing extraordinary maintenance, rehabilitation, upgrades to equipment or facilities, increased plant capacity, and extensions and enlargements to the System, and excluding well and septic tank conversions.

"Closing"-- as defined in Section 2.6.

"Closing Bonds" – as defined in Section 2.3(E).

"Closing Date"-- the date on which the Closing actually takes place.

"COBRA"-- as defined under Federal Employment Law.

"Code"-- the Internal Revenue Code of 1986.

"Confidential Information"-- as defined in Section 12.1.

"Contemplated Transactions"-- all of the transactions contemplated by this Agreement.

"Cost of Operation and Maintenance"-- all current expenses, paid or accrued, for the operation, maintenance and repair of all Facilities of the System, as calculated in accordance with generally accepted accounting principles for units of local government and on a consistent basis with the operation and maintenance and repair of the Facilities of the System under Seller's ownership, and shall include, without limiting the generality of the foregoing, insurance premiums, administrative expenses of the Buyer related solely to the System, labor, cost of materials, consumables and supplies used for current operation, but excluding any reserve for renewals or replacements, any extraordinary or emergency repairs, any replacements, any capital expenditures, any allowance for interest or depreciation or amortization, any other non-cash item, any profit, any franchise fees, any payments in lieu of taxes, and any voluntary payments to other governmental entities not required by law.

"Customer Deposits"—any amounts deposited with or held by the Seller as customer deposits.

"Damages"-- as defined in Section 11.2.

"Debt Service" – as defined in Section 2.3(E).

"Debt Service Base Amount" – as defined in Section 2.3(E)

"Due Diligence Expenses"— in addition to such sums already funded by Seller, a sum up to $200,000 or such greater amount as the Seller may in the future approve in writing, to reimburse the costs incurred by the Buyer for its due diligence expenses in making the decision to acquire the System and issue the Acquisition Bonds for the Purchase Price.

"Effective Time"-- 12:01 am. on the Closing Date.

"Employee Plans"-- as defined in Section 3.13.

"Employment Agreement"-- as defined in Section 2.7(a)(vi).

"Encumbrance"-- any charge, claim, community or other marital property interest, condition, equitable interest, lien, option, pledge, security interest, mortgage, right of way, easement, encroachment, servitude, right of first option, right of first refusal or similar restriction, including any restriction on use, voting (in the case of any security or equity interest), transfer, receipt of income or exercise of any other attribute of ownership.

"Environment"-- soil, land surface or subsurface strata, surface waters (including navigable waters and ocean waters), ground waters, drinking water supply, stream sediments, ambient air (including indoor air), plant and animal life and any other environmental medium or natural resource.

"Environmental, Health and Safety Liabilities"-- any cost, damages, expense, liability, obligation or other responsibility arising from or under any Environmental Law or Occupational Safety and Health Law, including those consisting of or relating to:

(a) any environmental, health or safety matter or condition (including on-site or off-site contamination, occupational safety and health and regulation of any chemical substance or product);

(b) any fine, penalty, judgment, award, settlement, legal or administrative proceeding, damages, loss, claim, demand or response, remedial or inspection cost or expense arising under any Environmental Law or Occupational Safety and Health Law;

(c) financial responsibility under any Environmental Law or Occupational Safety and Health Law for cleanup costs or corrective action,

including any cleanup, removal, containment or other remediation or response actions ("Cleanup") required by any Environmental Law or Occupational Safety and Health Law (whether or not such Cleanup has been required or requested by any Governmental Body or any other Person) and for any natural resource damages; or

(d) any other compliance, corrective or remedial measure required under any Environmental Law or Occupational Safety and Health Law.

The terms "removal," "remedial" and "response action" include the types of activities covered by the United States Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

"Environmental Law"-- any Legal Requirement that requires or relates to:

(a) advising appropriate authorities, employees or the public of intended or actual Releases of pollutants or hazardous substances or materials, violations of discharge limits or other prohibitions and the commencement of activities, such as resource extraction or construction, that could have significant impact on the Environment;

(b) preventing or reducing to acceptable levels the Release of pollutants or hazardous substances or materials into the Environment;

(c) reducing the quantities, preventing the Release or minimizing the hazardous characteristics of wastes that are generated;

(d) assuring that products are designed, formulated, packaged and used so that they do not present unreasonable risks to human health or the Environment when used or disposed of;

(e) protecting resources, species or ecological amenities;

(f) reducing to acceptable levels the risks inherent in the transportation of hazardous substances, pollutants, oil or other potentially harmful substances;

(g) cleaning up pollutants that have been Released, preventing the Threat of Release or paying the costs of such clean up or prevention; or

(h) making responsible parties pay private parties, or groups of them, for damages done to their health or the Environment or permitting self-appointed representatives of the public interest to recover for injuries done to public assets.

"ERISA"– the Employee Retirement Income Security Act of 1974.

"Exchange Act"-- the Securities Exchange Act of 1934.

"Excluded Assets"-- as defined in Section 2.2.

"Facilities"-- the Land, leasehold, license, easement, right-of-way, prescriptive claim or other interest in real property currently owned or operated by Seller or used by the Seller in the operation of the System, including the Tangible Personal Property used or operated by Seller at the respective locations of the Land, and excluding the Excluded Assets.

"Future Transfer Adjustment Process" – in the event that Buyer elects to transfer any part or parts of the System from time to time after Closing, to the extent that such transfer or transfers reduce the Buyer's collection of Gross Revenues and the Capital Charges collected by the Buyer ("Transfer Impact"), the provisions of this Agreement related to Seller's revenue guarantee amount of Gross Revenues and the applicable Maximum Annual Retainage threshold amount which must be met before payment of Capital Charges to Seller shall be adjusted by Buyer and Seller to reflect the Transfer Impact. In the event Buyer and Seller cannot agree on the Transfer Impact, disagreements shall be submitted to the dispute resolution process in Section 13.5.

"GAAP"-- generally accepted accounting principles applicable to the Seller for financial reporting in the United States, applied on a basis consistent with the basis on which the balance sheets and the other financial statements referred to in Section 3.3 were prepared.

"Governing Documents"-- the articles or certificate of incorporation and the bylaws of Sellers.

"Governmental Authorization"-- any consent, license, registration or permit issued, granted, given or otherwise made available by or under the authority of any Governmental Body or pursuant to any Legal Requirement.

"Governmental Body"-- any:

(a) federal, state, local, municipal, or other government;

(b) governmental authority of any nature (including any agency, branch, department, board, commission, court, tribunal or other entity exercising governmental powers); or

(c) body exercising any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power.

"Gross Revenues" or "Revenues" shall mean all moneys, received or receivable by the Buyer, or accruing to it in the operation of the System, from rates, fees, rentals, or

other charges for the services or Facilities of the System, excluding state and federal grants and grants in aid of construction, unless otherwise provided herein, all calculated in accordance with generally accepted accounting practice applicable to a local government. "Gross Revenues" or "Revenues" shall also be deemed to include any amounts (exclusive of Capital Charges retained by Seller) received by the Buyer as Capital Charges for any facilities acquired from the Seller, but shall not include Special Assessments or Capital Charges for any facilities not purchased from the Seller.

"Guarantee" -- as defined in Section 2.3(E).

"Hazardous Activity"-- the distribution, generation, handling, importing, management, manufacturing, processing, production, refinement, Release, storage, transfer, transportation, treatment or use (including any withdrawal or other use of groundwater) of Hazardous Material in, on, under, about or from any of the Facilities or any part thereof into the Environment and any other act, business, operation or thing that increases the danger, or risk of danger, or poses an unreasonable risk of harm, to persons or property on or off the Facilities.

"Hazardous Material"-- any substance, material or waste which is or will foreseeably be regulated by any Governmental Body, including any material, substance or waste which is defined as a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "contaminant," "toxic waste" or "toxic substance" under any provision of Environmental Law, and including petroleum, petroleum products, asbestos, presumed asbestos-containing material or asbestos-containing material, urea formaldehyde and polychlorinated biphenyls.

"Improvements"-- all buildings, structures, fixtures and improvements located on the Land or included in the Assets, including those under construction.

"Indemnified Person"-- as defined in Section 11.9.

"Indemnifying Person"-- as defined in Section 11.9.

"Insurance Policy" – as defined in Section 2.3(F).

"Intellectual Property Assets"-- as defined in Section 3.14.

"Interest Rate Adjustment" – as defined in Section 2.3(E).

"Inventories"-- all inventories of Seller, wherever located, including without limitation, all pumps, pipes, valves, plumbing fixtures, chemicals, stored water, spare parts and all other materials and supplies to be used by Seller in the operation of its business.

"IRS"-- the United States Internal Revenue Service and, to the extent relevant, the United States Department of the Treasury.

"Land"-- all parcels and tracts of land in which Seller has a fee ownership interest, except for the parcels and tracts of land set forth in Exhibit 2.2.

"Lease"-- any Real Property Lease or any lease or rental agreement, license, right to use or installment and conditional sale agreement to which Seller is a party and any other Seller Contract pertaining to the leasing or use of any Tangible Personal Property.

"Legal Requirement"-- any federal, state, local, municipal, or other constitution, law, ordinance, principle of common law, code, regulation, or statute.

"Liability"-- with respect to any Person, any liability or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person.

"Material Consents"-- as defined in Section 7.3.

"Maximum Annual Retainage" -- means, for each period in which Seller is entitled to receipt of any portion of the Capital Charges pursuant to Section 2.2(b) hereof, the sums set forth as follows, as adjusted pursuant to the Future Transfer Adjustment Process, and subject to the set-offs permitted under Section 2.2(b) hereof in each fiscal year in the maximum amount set forth in the Beck Schedule for such fiscal year:

PERIOD	**APPLICABLE MAXIMUM ANNUAL RETAINAGE**
Period 1: Date of Closing through 9/30/03	**All Capital Charges collected by Buyer in excess of $11,250,000, not to exceed $5,000,000, and not to exceed Maximum Cumulative Retainage**
Period 2: 10/01/03 through 9/30/04	**All Capital Charges collected by Buyer in excess of $10,000,000, not to exceed $5,000,000 and not to exceed Maximum Cumulative Retainage**
Period 3: 10/01/04 through 9/30/05	**All Capital Charges collected by Buyer in excess of $10,000,000, not to exceed $5,000,000 and not to exceed Maximum Cumulative Retainage**

Period 4: Each fiscal year of Buyer starting 10/01/05, until Seller has received the Maximum Cumulative Retainage	All Capital Charges collected by Buyer in excess of $8,500,000 per fiscal year, not to exceed $8,500,000 and not to exceed Maximum Cumulative Retainage

"Maximum Cumulative Retainage"-- the aggregate sum of $36 Million, as adjusted by Section 2.2(b), below.

"Monthly Fees" -- as defined in Section 2.3(D).

"Net Revenues" shall mean Gross Revenues less the Cost of Operation and Maintenance.

"Occupational Safety and Health Law"-- any Legal Requirement designed to provide safe and healthful working conditions and to reduce occupational safety and health hazards under the Occupational Safety and Health Act.

"One Year Call Bonds" -- as defined in Section 2.3(E).

"Order"-- any order, injunction, judgment, decree, ruling, assessment or arbitration award of any Governmental Body or arbitrator.

"Ordinary Course of Business"-- an action taken by a Person will be deemed to have been taken in the Ordinary Course of Business only if that action is consistent in nature, scope and magnitude with the past practices of such Person and is taken in the ordinary course of the normal, day-to-day operations of such Person.

"Permitted Encumbrances"-- as defined in Section 3.7.

"Person"-- an individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a Governmental Body.

"Proceeding"-- any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, judicial or investigative, whether formal or informal, whether public or private) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Body or arbitrator.

"Purchase Price"-- as defined in Section 2.3.

"Real Property"-- the Land and Improvements.

"Real Property Lease"-- any ground lease or space lease.

"Record"-- information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"Related Person"-- (a) any Person that directly or indirectly controls, is directly or indirectly controlled by or is directly or indirectly under common control with such specified Person;

(b) any Person that holds a Material Interest in such specified Person;

(c) each Person that serves as a director, officer, partner, executor or trustee of such specified Person (or in a similar capacity);

(d) any Person in which such specified Person holds a Material Interest; and

(e) any Person with respect to which such specified Person serves as a general partner or a trustee (or in a similar capacity).

For purposes of this definition, (a) "control" (including "controlling," "controlled by," and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and shall be construed as such term is used in the rules promulgated under the Securities Act; (b) the "Family" of an individual includes (i) the individual, (ii) the individual's spouse, (iii) any other natural person who is related to the individual or the individual's spouse within the second degree and (iv) any other natural person who resides with such individual; and (c) "Material Interest" means direct or indirect beneficial ownership (as defined in Rule 13d-3 under the Exchange Act) of voting securities or other voting interests representing at least ten percent (10%) of the outstanding voting power of a Person or equity securities or other equity interests representing at least ten percent (10%) of the outstanding equity securities or equity interests in a Person.

"Release"-- any release, spill, emission, leaking, pumping, pouring, dumping, emptying, injection, deposit, disposal, discharge, dispersal, leaching or migration on or into the Environment or into or out of any property.

"Remedial Action"-- all actions, including any capital expenditures, required: (a) to clean up, remove, treat or in any other way address any Hazardous Material or other substance; (b) to prevent the Release or Threat of Release or to minimize the further Release of any Hazardous Material or other substance so it does not migrate or endanger or threaten to endanger public health or welfare or the Environment; (c) to perform pre-

remedial studies and investigations or post-remedial monitoring and care; or (d) to bring all Facilities and the operations conducted thereon into compliance with Environmental Laws and environmental Governmental Authorizations.

"Remedial Capital Projects"— capital projects needed to serve existing customers as of the date of Closing that are necessary (i) to repair or replace Facilities that are defective, inoperative, or failing, (ii) to improve or repair the Facilities to the extent that the Facilities are not performing their intended functions in a commercially reasonable and efficient manner, (iii) to replace or improve the Facilities in order to cure any violations of any Governmental Authorizations; and (iv) to perform extraordinary maintenance or deferred maintenance that is necessary to enable the Facilities to perform their intended functions. Remedial Capital Projects shall not include any expansion related capital improvements, normal maintenance, renewal and replacement items normally incurred in the Ordinary Course of Business, or any Beck Reserve project. Buyer shall have twelve (12) months from the date of Closing to investigate and determine the extent of Remedial Capital Projects existing as of the date of Closing, if any, which determination shall be consistent with prevailing utility industry maintenance practices. On or before the first anniversary of execution of this Agreement, Buyer shall notify Seller in writing of the specific projects and estimated cost for each Remedial Capital Project. Disputes, if any shall be resolved in accordance with Section 13.5.

"Remedial Capital Projects Amount"-- an amount sufficient to enable the Buyer to fund all required Remedial Capital Projects for the System as it existed as of the date of the Closing, which amount shall be in excess of the aggregate amount of $29 Million funded for capital improvements as part of the Acquisition Bonds plus the Capital Improvement Plan Requirement for five years and the Renewal and Replacement Requirement for five years.

"Renewal and Replacement Requirement" -- an annual amount equal to $5,000,000 to be used for the purpose of paying the cost of renewals, upgrades, enhancements, or the replacement of capital assets of the System and extraordinary and emergency repairs thereto.

"Representative"-- with respect to a particular Person, any director, officer, manager, employee, agent, consultant, advisor, accountant, financial advisor, legal counsel or other representative of that Person.

"Retained Liabilities"-- as defined in Section 2.4(b).

"Seller"-- as defined in the first paragraph of this Agreement.

"Seller Contract"-- any contract, promise, or undertaking: (a) under which Seller has or may acquire any rights or benefits; (b) under which Seller has or may become

subject to any obligation or liability; or (c) by which Seller or any of the assets owned or used by Seller is or may become bound or are encumbered.

"Small Systems" – is defined in the Beck Reserve definition above.

"Special Assessments" -- shall mean revenues derived by the Buyer from special assessments imposed upon benefited property in connection with post-Closing acquisition or construction of additions, extensions or improvements to the System.

"Subsidiary"-- with respect to any Person (the "Owner"), any corporation or other Person of which securities or other interests having the power to elect a majority of that corporation's or other Person's board of directors or similar governing body, or otherwise having the power to direct the business and policies of that corporation or other Person (other than securities or other interests having such power only upon the happening of a contingency that has not occurred), are held by the Owner or one or more of its Subsidiaries.

"System" -- shall mean the complete combined and consolidated water, sewer and reclaimed water utility systems of the Seller together with any and all assets, improvements, extensions and additions thereto hereafter constructed or acquired, but not including the Excluded Assets.

"Tangible Personal Property"-- all machinery, equipment, tools, furniture, office equipment, computer hardware, supplies, materials, vehicles and other items of tangible personal property (other than Inventories) of every kind owned or leased by Seller (wherever located and whether or not carried on Seller's books), together with any express or implied warranty by the manufacturers or sellers or lessors of any item or component part thereof and all maintenance records and other documents relating thereto.

"Tax" -- any income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, property, environmental, windfall profit, customs, vehicle, airplane, boat, vessel or other title or registration, capital stock, franchise, employees' income withholding, foreign or domestic withholding, social security, unemployment, disability, real property, personal property, sales, use, transfer, value added, alternative, add-on minimum and other tax, fee, assessment, levy, tariff, charge or duty of any kind whatsoever and any interest, penalty, addition or additional amount thereon imposed, assessed or collected by or under the authority of any Governmental Body or payable under any tax-sharing agreement or any other contract.

"Tax Return"-- any return (including any information return), report, statement, schedule, notice, form, declaration, claim for refund or other document or information filed with or submitted to, or required to be filed with or submitted to, any Governmental Body in connection with the determination, assessment, collection or payment of any Tax

or in connection with the administration, implementation or enforcement of or compliance with any Legal Requirement relating to any Tax.

"Ten Year Call Bonds" -- as defined in Section 2.3(E).

"Third Party"-- a Person that is not a party to this Agreement.

"Third-Party Claim"-- any claim against any Indemnified Person by a Third Party, whether or not involving a Proceeding.

"Threat of Release"-- a reasonable likelihood of a Release that may require action in order to prevent or mitigate damage to the Environment that may result from such Release.

"Unbilled Customer Revenue" -- revenue for services provided to customers prior to the Effective Time that have not yet been billed as of the date of Closing, calculated on a basis consistent with Seller's current billing practices.

1.2 Usage

(a) Interpretation. In this Agreement, unless a clear contrary intention appears:

(i) the singular number includes the plural number and vice versa;

(ii) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are not prohibited by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;

(iii) reference to any gender includes each other gender;

(iv) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;

(v) "hereunder," "hereof," "hereto," and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article, Section or other provision hereof;

(vi) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term;

(vii) with respect to the determination of any period of time, "from" means "from and including" and "to" means "to but excluding"; and

(viii) references to documents, instruments or agreements shall be deemed to refer as well to all addenda, exhibits, schedules or amendments thereto

(ix) the phrase "the date hereof", the "date of this Agreement" or similar phrases means December 21, 2002.

(b) Accounting Terms and Determinations. Unless otherwise specified herein, all accounting terms used herein shall be interpreted and all accounting determinations hereunder shall be made in accordance with GAAP, as the same applies to the Seller, and in accordance with generally accepted accounting principles applicable to units of local government, as the same applies to the Buyer.

(c) Legal Representation of the Parties. This Agreement was negotiated by the parties with the benefit of legal representation, and any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any party shall not apply to any construction or interpretation hereof.

2. Sale and Transfer of Assets; Closing

2.1 Assets To Be Sold

Upon the terms and subject to the conditions set forth in this Agreement, at the Closing, but effective as of the Effective Time, Seller shall sell, convey, assign, transfer and deliver to Buyer, and Buyer shall purchase and acquire from Seller, free and clear of any Encumbrances (except as to Appurtenances to the extent provided for elsewhere herein) other than Permitted Encumbrances, all of Seller's right, title and interest in and to all of Seller's property and assets, real, personal or mixed, tangible and intangible, of every kind and description, wherever located, including the following (but excluding the Excluded Assets):

(a) all Real Property and all Appurtenances;

(b) all Tangible Personal Property;

(c) all Inventories;

(d) all Accounts Receivable and Unbilled Customer Revenue;

(e) all Seller Contracts (other than those constituting Excluded Assets) and all outstanding offers or solicitations made by or to Seller to enter into any Seller Contract;

(f) all Governmental Authorizations and all pending applications therefor or renewals thereof, in each case to the extent transferable to Buyer;

(g) all data and Records related to the operations of Seller, including client and customer lists and Records, all personnel records (provided that Seller shall have reasonable access thereto) referral sources, research and development reports and Records, production reports and Records, service and warranty Records, equipment logs, operating guides and manuals, financial and accounting Records, creative materials, advertising materials, promotional materials, studies, reports, correspondence and other similar documents and Records, subject to Legal Requirements;

(h) all of the intangible rights and property of Seller, including Intellectual Property assets, the trade name, "Florida Water Services", going concern value, goodwill, telephone, telecopy and e-mail addresses and listings;

(i) all claims of Seller against third parties relating to the Assets, whether choate or inchoate, known or unknown, contingent or non-contingent; and

(j) all rights of Seller relating to deposits and prepaid expenses, claims for refunds and rights to offset in respect thereof and that are not excluded under Section 2.2, and not including Seller letters of credit for which the Seller is an applicant.

All of the property and assets to be transferred to Buyer hereunder are herein referred to collectively as the "Assets" or "Assets to be Sold".

2.2 Excluded Assets

Notwithstanding anything to the contrary contained in Section 2.1 or elsewhere in this Agreement, the following assets of Seller (collectively, the "Excluded Assets") are not part of the sale and purchase contemplated hereunder, are excluded from the Assets and shall remain the property of Seller after the Closing:

(a) all cash, cash equivalents and short-term investments; all payments (other than Customer Deposits) received by Seller prior to Closing (other than as set forth in Section 2.1(k) above);

(b) Capital Charges received after the Closing by Buyer which shall be remitted to Seller in each one-year period following the date of the Closing, provided that (i) the total amount of Capital Charges retained by and belonging to Seller for any one such year shall not exceed the Maximum Annual Retainage (and at such time as the total amount of Capital Charges remitted to Seller for any such one year period equals the Maximum Annual Retainage, all further Capital Charges received by the System in such year shall be retained by and belong to the Buyer), and (ii) the aggregate amount retained by the Seller as Excluded Assets pursuant to this subsection 2.2(b) shall be the Maximum Cumulative Retainage and at such time as the total cumulative amount of Capital

Charges remitted to Seller under this Section 2.2(b) equals the Maximum Cumulative Retainage, no further Capital Charges shall be remitted to the Seller but all such Capital Charges received by the System thereafter be retained by and shall belong to the Buyer. The foregoing Capital Charges retained by Seller are to compensate Seller for the excess capacity existing in the System as of the Effective Date. The amount to be remitted to Seller hereunder by Buyer shall be paid to Seller once a year, commencing 13 months after the Effective Date, for all amount collected during the 12 month period then ended. Seller authorizes Buyer to collect the Capital Charges on behalf of Seller. Seller agrees that as to all amounts which the Buyer is required to remit to the Seller under this Section 2.2(b), the Buyer may withhold therefrom such amount as the Buyer would have the right to setoff against indebtedness owed to Buyer by Seller, it being the intention that for the purposes solely of this sentence that the Capital Charges to be remitted to the Seller by Buyer under this Section 2.2(b) be treated as if it were indebtedness owing the Seller by the Buyer. Seller further agrees that Buyer may setoff against amounts which the Buyer is required to remit to the Seller under this section, such portions of the Beck Reserve that Buyer has expended or encumbered for identified projects prior to September 30, 2007. Buyer's set off right is subject to the provisions of Section 11.8. Buyer agrees that any of the Beck Reserve monies not expended or encumbered for identified projects prior to September 30, 2007, shall be applied by Buyer to pay any Capital Charges not yet received by Seller up to the Maximum Cumulative Retainage (notwithstanding the schedule of payments as set forth in the definition of Maximum Annual Retainage), and any outstanding balance due to Seller for Purchase Price Installment 2.

The Capital Charges remitted to and retained by Seller shall include the portion thereof representing AFPI, to the extent of the following:

Period	Percentage of AFPI
for Capital Charges received until 9/30/03	100%
for Capital Charges received until 9/30/04	80%
for Capital Charges received until 9/30/05	60%
for Capital Charges received until 9/30/06	40%
for Capital Charges received until 9/30/07	20%
and thereafter	0%

(c) all minute books, stock Records and corporate seals;

(d) any shares of capital stock of Seller held in treasury;

(e) Seller's letters of credit outstanding at the date of Closing.;

(f) all insurance policies and rights thereunder (except to the extent specified in Section 2.1(i) and (j));

(g) all of the contracts listed in Exhibit 2.2;

(h) Records that Seller is required by law to retain in its possession;

(i) all claims for refund of Taxes and other governmental charges of whatever nature;

(j) all rights in connection with and assets of any Employee Plans; and

(k) all rights of Seller under this Agreement, the Bill of Sale, the Assignment and Assumption Agreement; and

(l) the property and assets expressly designated in Exhibit 2.2.

2.3 Consideration

(A) Installment Payments. The consideration for the Assets will be four hundred fifty-six million five hundred thousand ($456,500,000 , as may be adjusted as provided below in subsection 2.3(B) (the "Purchase Price")"), and as further may be adjusted as provided in the definition of "Acquisition Bonds Net Proceeds". Subject to the provisions of subsection 2.3(E), subsection 2.3(F) and the definition of "Acquisition Bonds Net Proceeds, the Purchase Price will be payable in Installments delivered by wire transfer from Buyer to Seller as follows:

Date Payable	Installment	Amount Due
At the Closing	Installment 1	$420,000,000
On the third anniversary date of the closing	Installment 2	$36,500,000

(B) Purchase Price Adjustments. Installment 2 of the Purchase Price may be reduced under the following circumstances:

(i) the amount necessary to fund any indemnity amounts owed by Seller under Article 11 hereunder, and;

(ii) for all Remedial Capital Projects Amounts.

Seller has provided Buyer with its' current five year capital improvement program (the "Capital Improvement Plan") which totals $176,667,000Buyer shall identify the projects and estimated costs that comprise the Remedial Capital Projects Amount which are not included on Seller's five year capital improvement program. If Seller does not concur that a project is a Remedial Capital Project or part of the Capital Improvement Plan Requirement during the initial five year post Closing time period the matter shall be submitted to the dispute resolution process set forth in 13.5.

(C) Dispute Resolution. Prior to implementing any reduction or offset or withholding any moneys from the Capital Charges otherwise to be remitted to Seller hereunder, the Buyer shall provide written notice to Seller of any proposed reduction or offset. Seller shall have twenty (20) days to provide Buyer written notice of objection to any such reductions or offset (and if Seller fails to so object, it will be deemed to have agreed with such reduction or offset). Buyer and Seller shall have sixty (60) days following written notice of objection from Seller to amicably resolve Seller's objections. To the extent any objections cannot be reconciled, either party may submit such objection to the Dispute Resolution Process. Buyer may at any time deposit any reduction amount with an escrow agent pending a final resolution under the Dispute Resolution Process, pursuant to an escrow agreement reasonably satisfactory to the parties and to the extent Buyer has done so Buyer shall not be deemed in default hereunder.

(D) Guarantee. Seller shall provide at the Closing a guarantee ("Guarantee") in a form reasonably acceptable to the Buyer and the Seller that will provide that Buyer will receive Gross Revenues constituting monthly water and sewer charges ("Monthly Fees") for the first twelve months after Closing of $95,318,000; for the second twelve months of $97,701,000; and for the third twelve months of $100,143,000. If the Buyer lowers any Monthly Fees during the forgoing time periods, the amount guaranteed will be reduced by the amount the Monthly Fees would have been if such reduction had not occurred. The Guarantee Monthly Fees shall be adjusted in accordance with the Future Transfer Adjustment Process.

(E) Bond Issuance. The Buyer agrees to use all reasonable commercial efforts to issue on or before the Closing, the maximum amount of Acquisition Bonds that can be issued at the Closing ("Closing Bonds") which have the following characteristics: (1) serial and term maturities between 2003 and 2032; (2) one year call on $75,000,000 of the issue ("One Year Call Bonds"); (3) ten year call on the balance of the issue ("Ten Year Call Bonds"); (4) investment grade, and (5) level debt service of $36,461,000 per year (the "Base Debt Service Amount") plus the Interest Rate Adjustment (the combined Base Debt Service and the Interest Rate Adjustment referred to as "Debt Service"). Seller shall assume responsibility for structuring the Acquisition Bonds to achieve the purpose of meeting the criteria in the sentence above. Seller shall pay to Buyer at Closing the sum that represents the first year difference in interest rate based upon the issuance of the

One Year Call Bonds versus the issuance of the Ten Year Call Bonds (the "Interest Rate Adjustment"). In the event the Buyer, after consultation with the Buyer's financial advisor(s), underwriter(s), legal advisors, and with Seller, in good faith, determines that such Closing Bonds cannot be sold on a date that permits the Closing to occur on or prior to February 14, 2003, then the Buyer shall immediately notify Seller in writing of such determination, with such notice setting forth in reasonable detail the bases upon which such determination was made, and the requirements, if reasonably ascertainable to Buyer, for ultimate issuance of the Closing Bonds. Upon receipt of such notice Seller shall have the option of (1) postponing the Closing until such time as Closing Bonds can reasonably be issued in accordance with this Agreement; or (2) canceling this Agreement, and, if cancelled, thereupon the Buyer and Seller shall have no liabilities and no further obligations to each other under this Agreement, except that Seller shall pay to Buyer the Due Diligence Expenses.

(F) Condition Precedent to Payment of Purchase Price Installment 2. The following shall be a condition precedent to Buyer's obligation to pay Seller Purchase Price Installment 2: release of the Bond Debt Service Reserve (with any partial releases of the Bond Debt Service Reserve to be applied to payment of Purchase Price Installment 2) or substitution of the Bond Debt Service Reserve with a bond insurance product, including, but not limited to, letters of credit, bank guarantees, and surety policies, that will allow the release of the Bond Debt Service Reserve, provided that such product substitution does not result in a reduction to the ratings of the Closing Bonds below the ratings level at Closing (the "Insurance Policy"). Seller has the option, without expiration, to (1) provide the Insurance Policy to the Buyer and/or (2) require the Buyer to issue refunding bonds, provided the combined debt service on the Refunding Bonds and any un-refunded portion of the Acquisition Bonds remains at or below the level of the Debt Service for each subsequent year. Seller retains the right and responsibility of structuring the refunding transaction. Buyer will cooperate with Seller in exercising and implementing its option as set forth above.

2.4 Liabilities

(a) Assumed Liabilities. On the Closing Date, but effective as of the Effective Time, the Buyer shall assume and agree to discharge only the following Liabilities of Seller (the "Assumed Liabilities"):

(i) any account payable (other than an account payable to any Related Person of Seller) arising with respect to the System, that remains unpaid at and is not delinquent as of the Effective Time but only to extent it is included to determine the Final True Up as set forth in Section 2.7(c);

(ii) any account payable arising with respect to the System, (other than a account payable to any Related Person of Seller) incurred by Seller in the

Ordinary Course of Business between September 19, 2002 and the Effective Time that remains unpaid at and is not delinquent as of the Effective Time but only to extent it is included to determine the Final True Up as set forth in Section 2.7(c);

(iii) any Liability to Seller's customers (other than an account payable) incurred by Seller in the Ordinary Course of Business outstanding as of the Effective Time, including, but not limited to Customer Deposits (but only to the extent that an amount of cash equal thereto is sold to Buyer hereunder and transferred (whether by transference in cash or by credit against the Purchase Price) to the Buyer at the Closing) (other than any Liability arising out of or relating to a breach that occurred prior to the Effective Time);

(iv) any Liability arising after the Effective Time under the Seller Contracts (other than any Liability arising under the contracts described on Exhibit 2.2 or arising out of or relating to a breach that occurred prior to the Effective Time); any Liability of Seller arising after the Effective Time under any Seller Contract included in the Assets that is entered into by Seller after the date hereof in the Ordinary Course of Business or in accordance with the provisions of this Agreement (other than any Liability arising out of or relating to a breach that occurred prior to the Effective Time), and

(v) any Liability of Buyer under this Agreement or any other document executed in connection with the Contemplated Transactions,

(vi) any Liability of Buyer based upon Buyer's acts or omissions occurring after the Effective Time provided, however, that such Liability does not arise as a result of Seller's Breach hereunder or is a Liability for which the Seller has an obligation to indemnify the Buyer in accordance herewith,

(vii) any Liability arising after Closing from operation of the System after the Closing, provided, however, that such Liability does not result as a result of Seller's Breach hereunder or is a Liability for which the Seller has an obligation to indemnify the Buyer in accordance herewith.

Notwithstanding the foregoing, even if included in the foregoing, the following shall not constitute Liabilities assumed by the Buyer and, therefor, not be included in the term "Assumed Liabilities": (i) a Liability set forth on Exhibit .2.2 hereof, (ii) any Liability arising out of or relating to any employee grievance whether or not the affected employees are hired by Buyer based on actual or alleged acts or omissions of the Seller prior to the Effective Time, (iii) any Liability of Seller arising out of or resulting from any Proceeding pending as of the Effective Time, (iv) any Liability of Seller arising out of any Proceeding commenced after the Effective Time and arising our of or relating to any occurrence or event happening prior to the Effective Time to the extent that the such Proceeding relates to Seller's actions or inactions prior thereto, (v) any Liability for

Seller's performance of its obligations hereunder, and (vi) any Liability of Seller based upon Seller's acts or omissions occurring after the Effective Time)

(b) Retained Liabilities. The Retained Liabilities shall remain the sole responsibility of and shall be retained, paid, performed and discharged solely by Seller. "Retained Liabilities" shall mean all Liabilities other than Assumed Liabilities.

2.5 Allocation

Seller shall prepare and deliver IRS Form 8594 to Buyer within forty-five (45) days after the Closing Date to be filed with the IRS. In any Proceeding related to the determination of any Tax, neither Buyer nor Seller shall contend or represent that such allocation is not a correct allocation.

2.6 Closing

The purchase and sale provided for in this Agreement (the "Closing") will take place at the offices of Buyer's counsel commencing at 10:00 a.m. (local time) on or before February 14, 2003, unless Buyer and Seller otherwise agree. Subject to the provisions of Section 9, failure to consummate the purchase and sale provided for in this Agreement on the date and time and at the place determined pursuant to this Section 2.6 will not result in the termination of this Agreement and will not relieve any party of any obligation under this Agreement. In such a situation, the Closing will occur as soon as practicable, subject to Section 9.

2.7 Closing Obligations

In addition to any other documents to be delivered under other provisions of this Agreement, at the Closing:

(a) Seller shall deliver to Buyer, together with funds sufficient to pay all Taxes necessary for the transfer, filing or recording thereof:

(i) a bill of sale for all of the Assets that are Tangible Personal Property in the form to be agreed upon by the parties prior to Closing (the "Bill of Sale") executed by Seller and the guaranty;

(ii) an assignment of all of the Assets that are intangible personal property in the form to be agreed upon by the parties prior to Closing , which assignment shall also contain Buyer's undertaking and assumption of the Assumed Liabilities (the "Assignment and Assumption Agreement") executed by Seller;

(iii) for each interest in Real Property identified on Exhibit 3.7(a) and (b), a recordable special warranty deed; for all easement interests, an assignment of easements without warranty; for each leasehold interest, an assignment of lease;

or such other appropriate document or instrument of transfer, as the case may require, together with a general assignment by the Seller of any and all rights or interests Seller may otherwise have or hold (whether by license, permit, prescriptive right, or otherwise) in respect of its operation of the System, to occupy, use, traverse, spray, percolate through, burrow under, each in form and substance satisfactory to Buyer and its counsel and executed by Seller;

(iv) assignments of all Intellectual Property Assets executed by Seller in form reasonably satisfactory to Buyer;

(v) such other deeds, bills of sale, assignments, certificates of title, documents and other instruments of transfer and conveyance as may reasonably be requested by Buyer, each in form and substance agreed upon by the parties prior to Closing, executed by Seller;

(vi) employment agreements in the form to be prepared by Buyer in accordance with the provisions of this Agreement, executed by such members of Seller's senior management team as identified by Buyer in writing within ten business days after execution of this Agreement (the "Employment Agreements");

(vii) assignments of all construction work in progress in form reasonably acceptable to Buyer which have not yet been placed in service as of the date of the Closing (such capital improvements which have been placed in service being part of the Facilities which are otherwise conveyed by Seller hereunder);

(viii) a certificate executed by Seller as to the accuracy of its representations and warranties as of the date of this Agreement and as of the Closing in accordance with Section 7.1 and as to its compliance with and performance of their covenants and obligations to be performed or complied with at or before the Closing in accordance with Section 7.2;

(ix) a certificate of the Secretary of Seller certifying, as complete and accurate as of the Closing, attached copies of the Governing Documents of Seller, certifying and attaching all requisite resolutions or actions of Seller's board of directors and shareholders approving the execution and delivery of this Agreement and the consummation of the Contemplated Transactions and certifying to the incumbency and signatures of the officers of Seller executing this Agreement and any other document relating to the Contemplated Transactions; and

(x) the sum of $200,000.00 which will be delivered to Buyer in accordance with Buyer's wire transfer instructions. Buyer agrees to hold this sum in trust for the sole purpose of using such amount only to satisfy the obligations that the Seller owes to the Buyer to pay for the items set forth in Section 10.9 hereof. Buyer may remove portions of such amount from the foregoing trust at

such time as Buyer incurs expenses under said section for which the Seller is liable. In the event that said amount is not utilized as set forth above within the time frames set forth within such section, then the Buyer shall return to Seller the amount thereof as is not so used.

(b) Buyer shall deliver to Seller:

(i) Installment 1 of the Purchase Price plus or minus such other funds as set forth on a closing statement to be agreed upon between Buyer and Seller pursuant to the terms of this Agreement by wire transfer to a domestic account of a United States bank specified by the Seller in a writing delivered to Buyer on or before the Closing Date;

(ii) the Assignment and Assumption Agreement executed by Buyer;

(iii) the executed Employment Agreements ;

(iv) a certificate executed by Buyer as to the accuracy of its representations and warranties as of the date of this Agreement and as of the Closing in accordance with Section 8.1 and as to its compliance with and performance of its covenants and obligations to be performed or complied with at or before the Closing in accordance with Section 8.2; and

(v) a certificate of the Secretary of Buyer certifying, as complete and accurate as of the Closing, attached copies of the Governing Documents of Buyer and certifying and attaching all requisite resolutions or actions of Buyer's governing board approving the execution and delivery of this Agreement and the consummation of the Contemplated Transactions and certifying to the incumbency and signatures of the officers of Buyer executing this Agreement and any other document relating to the Contemplated Transactions.

(c) As additional consideration for the transaction the determination of the following (the "Final True Up") will take place between 120 and 140 days after the Closing and, in the event that the parties cannot agree on the foregoing, then either party may submit such dispute to the Dispute Resolution Process. To the extent that Eligible Accounts (as hereinafter defined) and Eligible Unbilled Revenues (as hereinafter defined) sold to the Buyer hereunder as of the Effective Time minus accounts payable assumed by the Buyer hereunder as of the Effective Time ("Final Computed Amount") is in an amount greater than zero ($0) Dollars, then the Buyer shall immediately pay to the Seller the difference and to the extent that the Final Computed Amount is less than zero ($0) Dollars, then the Seller shall immediately pay to the Buyer the difference. "Eligible Accounts" means Accounts Receivable outstanding as of the Effective Time that are actually collected by the Buyer within 90 days after the Effective Time and "Eligible

Unbilled Revenues" means Unbilled Customer Revenue outstanding as of the Effective Time that are actually collected by the Buyer within 120 days after the Effective Time.

(d) At the Closing, the Buyer shall have received (i) an opinion of counsel acceptable to the Buyer stating that neither the City of Gulf Breeze nor the City of Milton will be held liable, as a matter of law, for the liabilities of the Buyer and (ii) an opinion of counsel acceptable to the Buyer stating that upon the acquisition of the System by the Buyer, the rates, fees and charges for the services and facilities of the System are not subject to regulation by the Florida Public Service Commission or any local regulatory authority.

2.8 Consents

(a) If there are any Material Consents that have not yet been obtained (or otherwise are not in full force and effect) as of the Closing, in the case of each Seller Contract as to which such Material Consents were not obtained (or otherwise are not in full force and effect) (the "Restricted Material Contracts"), Buyer may waive the closing conditions as to any such Material Consent and either:

(i) elect to have Seller continue its efforts to obtain the Material Consents; or

(ii) elect to have Seller retain that Restricted Material Contract and all Liabilities arising therefrom or relating thereto; or

(iii) elect to have Seller require any other obligations under such contract to perform their obligations under such contract and remit to Seller the amounts due to such obligations, for payment by the Seller to such obligations.

If Buyer elects to have Seller continue its efforts to obtain any Material Consents and the Closing occurs, notwithstanding Sections 2.1 and 2.4, neither this Agreement nor the Assignment and Assumption Agreement nor any other document related to the consummation of the Contemplated Transactions shall constitute a sale, assignment, assumption, transfer, conveyance or delivery or an attempted sale, assignment, assumption, transfer, conveyance or delivery of the Restricted Material Contracts, and following the Closing, the parties shall use Best Efforts, and cooperate with each other, to obtain the Material Consent relating to each Restricted Material Contract as quickly as practicable. Pending the obtaining of such Material Consents relating to any Restricted Material Contract, the parties shall cooperate with each other in any reasonable and lawful arrangements designed to provide to Buyer the benefits of use of the Restricted Material Contract for its term (or any right or benefit arising thereunder, including the enforcement for the benefit of Buyer of any and all rights of Seller against a third party thereunder). Once a Material Consent for the sale, assignment, assumption, transfer, conveyance and delivery of a Restricted Material Contract is obtained, Seller shall

promptly assign, transfer, convey and deliver such Restricted Material Contract to Buyer, and Buyer shall assume the obligations under such Restricted Material Contract assigned to Buyer from and after the date of assignment to Buyer pursuant to a special-purpose assignment and assumption agreement substantially similar in terms to those of the Assignment and Assumption Agreement (which special-purpose agreement the parties shall prepare, execute and deliver in good faith at the time of such transfer, all at no additional cost to Buyer).

(b) If there are any Consents not listed on Exhibit 7.3 necessary for the assignment and transfer of any Seller Contracts to Buyer (the "Nonmaterial Consents") which have not yet been obtained (or otherwise are not in full force and effect) as of the Closing, Buyer shall elect at the Closing, in the case of each of the Seller Contracts as to which such Nonmaterial Consents were not obtained (or otherwise are not in full force and effect) (the "Restricted Nonmaterial Contracts"), whether to:

(i) accept the assignment of such Restricted Nonmaterial Contract, in which case, as between Buyer and Seller, such Restricted Nonmaterial Contract shall, to the maximum extent practicable and notwithstanding the failure to obtain the applicable Nonmaterial Consent, be transferred at the Closing pursuant to the Assignment and Assumption Agreement as elsewhere provided under this Agreement; or

(ii) reject the assignment of such Restricted Nonmaterial Contract, in which case, notwithstanding Sections 2.1 and 2.4, (A) neither this Agreement nor the Assignment and Assumption Agreement nor any other document related to the consummation of the Contemplated Transactions shall constitute a sale, assignment, assumption, conveyance or delivery or an attempted sale, assignment, assumption, transfer, conveyance or delivery of such Restricted Nonmaterial Contract, and (B) Seller shall retain such Restricted Nonmaterial Contract and all Liabilities arising therefrom or relating thereto.

3. Representations and Warranties of Seller

Seller represents and warrants to Buyer as of date of this Agreement as follows:

3.1 Organization And Good Standing

(a) Seller is qualified to do business in the State of Florida. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida, with full corporate power and authority to conduct its business as it is now being conducted, to own or use the properties and assets that it purports to own or use, and to perform all its obligations under the Agreement. Complete and accurate copies of the Governing Documents of Seller, as currently in effect, will be provided to Buyer prior to Closing.

(b) Seller has no Subsidiary and, except as disclosed to Buyer in writing prior to Closing, does not own any shares of capital stock or other securities of any other Person.

3.2 Enforceability; Authority; No Conflict

(a) This Agreement constitutes the legal, valid and binding obligation of Seller, enforceable against it in accordance with its terms and each of Seller's Closing Documents will constitute the legal, valid, and binding obligation of Seller, enforceable against Sellers. Seller has the absolute and unrestricted right, power and authority to execute and deliver this Agreement and, except as disclosed in Exhibit 3.2(c), to perform its obligations under this Agreement, and such action has been duly authorized by all necessary action by Seller's shareholders and board of directors.

(b) Neither the execution and delivery of this Agreement nor the consummation or performance of any of the Contemplated Transactions will, directly or indirectly (with or without notice or lapse of time):

(i) Breach (A) any provision of any of the Governing Documents of Seller or (B) any resolution adopted by the board of directors or the shareholders of Seller;

(ii) except as disclosed in Exhibit 7.3, breach any provision of, or give any Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or payment under, or to cancel, terminate or modify, any Seller Contract; or

(iii) except as disclosed in Exhibit 3.2(c), result in the imposition or creation of any Encumbrance upon or with respect to any of the Assets.

(c) Except as provided under Section 367.071, Florida Statutes, and applicable equivalent county regulatory provisions, Seller is not required to give any notice to or obtain any material consent from any Person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the Contemplated Transactions, except as set forth in Exhibit 3.2(c), and all of obligations, representations and warranties of the parties hereto under this Agreement are qualified and limited by such requirements as may be imposed pursuant to said Section 367.071, Florida Statutes, and equivalent county regulatory provisions, if applicable.

3.3 Financial Statements

Seller has delivered or made available to Buyer: (a) an audited balance sheet of Seller as at December 31, 2001, 2000 and 1999 (including the notes thereto, the "Balance Sheet"), and the related audited statements of income, changes in shareholders' equity and cash flows for the fiscal year then ended, including in each case the notes thereto,

together with the report thereon of Price Waterhouse Coopers, independent certified public accountants; and (b) an unaudited balance sheet of Seller as at July 31, 2002 (the "Interim Balance Sheet") and the related unaudited statement of income. Such financial statements fairly present the financial condition and the results of operations, changes in shareholders' equity and cash flows of Seller as of the respective dates of and for the periods referred to in such financial statements, all in accordance with GAAP.

3.4 Sufficiency of Assets

The Assets (a) constitute all of the assets, tangible and intangible, of any nature whatsoever, necessary to operate Seller's business in the manner operated by the Seller as of September 19, 2002 and as presently operated by Seller and (b) include all of the operating assets of Seller and the Real Property, all Appurtenances, all real estate privileges, rights, easements, hereditaments, and other appurtenances being transferred to the Buyer at the Closing constitute all or the foregoing.

3.5 Description of Land

Exhibit 3.5 contains a description of the Land.

3.6 Description of Leased Real Property

Exhibit 3.6 contains a description of the Leased Real Property.

3.7 Title to Assets; Encumbrances

(a) Seller owns good and marketable title to its respective estates in the Land, free and clear of any Encumbrances, other than:

(i) liens for Taxes for the current tax year which are not yet due and payable; and

(ii) those described in that certain Title Commitment delivered to Buyer ("Real Estate Encumbrances").

To the extent in Seller's possession, true and complete copies of (A) all deeds, existing title insurance policies and surveys of or pertaining to the Real Property and (B) all instruments, agreements and other documents evidencing, creating or constituting any Real Estate Encumbrances have been made available to Buyer. Seller warrants to Buyer that, at the time of Closing, the Land shall be free and clear of all Real Estate Encumbrances identified on Schedule B-2 to the Title Commitment. (Real Estate Encumbrances other than those identified on Exhibit 3.7(A), the "Permitted Real Estate Encumbrances".) Seller owns good and transferable title to all of the other Assets free and clear of any Encumbrances other than those described in Exhibit 3.7(B) ("Non-Real Estate Encumbrances"). Seller warrants to Buyer that, at the time of Closing, all Assets

other than the Real Property shall be free and clear of Non-Real Estate Encumbrances other than those marked on Exhibit 3.7 with three asterisks to the left of such item (those so marked, the "Permitted Non-Real Estate Encumbrances" and, together with the Permitted Real Estate Encumbrances "Permitted Encumbrances").

Seller makes no representations in this Section 3.7 regarding title to or the sufficiency of Appurtenances to the Real Property.

3.8 Taxes

(a) Tax Returns Filed and Taxes Paid. Seller has filed or caused to be filed on a timely basis all Tax Returns and all reports with respect to Taxes that are or were required to be filed pursuant to applicable Legal Requirements. All Tax Returns and reports filed by Seller are true, correct and complete. Seller has paid, or made provision for the payment of all Taxes that have or may have become due for all periods covered by the Tax Returns or otherwise, or pursuant to any assessment received by Seller, except such Taxes, if any, as are listed in Part 3.14(a) and are being contested in good faith. No claim has been made or is expected to be made by any Governmental Body in a jurisdiction where Seller does not file Tax Returns that it is or may be subject to taxation by that jurisdiction. There are no Encumbrances on any of the Assets that arose in connection with any failure (or alleged failure) to pay any Tax, and Seller has no knowledge of any basis for assertion of any claims attributable to Taxes which, if adversely determined, would result in any such Encumbrance.

(b) Buyer agrees to comply with the requirements of Section 196.295, Florida Statutes, Ad Valorem and Personal Property Taxes.

(c) Specific Potential Tax Liabilities and Tax Situations.

(i) Withholding. All Taxes that Seller is or was required by Legal Requirements to withhold, deduct or collect have been or will be duly withheld, deducted and collected and, to the extent required, have been paid to the proper Governmental Body or other Person.

3.9 Compliance With Legal Requirements; Governmental Authorizations

(a) Except as set forth in Exhibit 3.11, without representation that items on Exhibit 3.11 are material:

(i) To Seller's knowledge, Seller is in compliance with each Legal Requirement that is applicable to it or to the conduct or operation of its business or the ownership or use of any of its assets;

(ii) No event has occurred or circumstance exists that (A) may constitute or result in a violation by Seller of, or a failure on the part of Seller to

comply with, any Legal Requirement or (B) may give rise to any obligation on the part of Seller to undertake, or to bear all or any portion of the cost of, any remedial action of any nature; and

(iii) Seller has not received any notice or other communication (whether oral or written) from any Governmental Body or any other Person regarding (A) any actual, alleged, possible or potential violation of, or failure to comply with, any Legal Requirement or (B) any actual, alleged, possible or potential obligation on the part of Seller to undertake, or to bear all or any portion of the cost of, any remedial action of any nature.

(b) Exhibit 3.11(b) contains a complete and accurate list of each Governmental Authorizations that are held by Seller or that otherwise relates to Seller's business or the Assets. To Seller's knowledge, the Governmental Authorizations listed are valid and in full force and effect. Except as disclosed in Exhibit 3.11(b):

(i) Seller is in material compliance with all of the material terms and requirements of the Governmental Authorizations;

(ii) No event has occurred or circumstance exists that may (A) constitute or result directly or indirectly in a material violation of or a material failure to comply with any material term or requirement of any Governmental Authorization or (B) result directly or indirectly in the revocation, withdrawal, suspension, cancellation or termination of, or any modification to, any material Governmental Authorization;

(iii) Seller has not received any notice or other communication (whether oral or written) from any Governmental Body or any other Person regarding (A) any actual, alleged, possible or potential violation of or failure to comply with any term or requirement of any Governmental Authorization or (B) any actual, proposed, possible or potential revocation, withdrawal, suspension, cancellation, termination of or modification to any Governmental Authorization, ***other than*** such violations, failures, revocations, withdrawals, suspensions, cancellations, terminations or modifications as have either been resolved with such Governmental Body or Person, or are not material to the successful operation of the System or to the results of such operations; and

(iv) To the best of Seller's knowledge, all applications required to have been filed for the renewal of the material Governmental Authorizations have been duly filed on a timely basis with the appropriate Governmental Bodies, and all other material filings required to have been made with respect to such Governmental Authorizations have been duly made on a timely basis with the appropriate Governmental Bodies.

The Governmental Authorizations collectively constitute the Governmental Authorizations necessary to permit Seller to lawfully conduct and operate its business in the manner in which it currently conducts and operates such business and to permit Seller to own and use its assets in the manner in which it currently owns and uses such assets.

3.10 Legal Proceedings; Orders

(a) Except as set forth in Exhibit 3.12, there is no pending or, to Seller's knowledge, threatened Proceeding:

(i) by or against Seller or that otherwise relates to or may affect the business of, or any of the assets owned or used by, Seller; or

(ii) that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, any of the Contemplated Transactions.

To the knowledge of Seller, no event has occurred or circumstance exists that is reasonably likely to give rise to or serve as a basis for the commencement of any such Proceeding. Seller will promptly deliver or provided access to Buyer copies of all pleadings, correspondence and other documents relating to each Proceeding listed in Exhibit 3.12. There are no Proceedings listed or required to be listed in Exhibit 3.12 that could have a material adverse effect on the business, operations, assets, condition or prospects of Seller or upon the Assets.

(b) Except as set forth in Exhibit 3.12; to the knowledge of Seller, no officer, director, agent or employee of Seller is subject to any Order that prohibits such officer, director, agent or employee from engaging in or continuing any conduct, activity or practice relating to the business of Seller.

(c) Except as set forth in Exhibit 3.12:

(i) To Seller's knowledge, Seller is in material compliance with all of the terms and requirements of each Order to which it or any of the Assets is or has been subject;

(ii) To Seller's knowledge, no event has occurred or circumstance exists that is reasonably likely to constitute or result in a violation of or failure to comply with any term or requirement of any Order to which Seller or any of the Assets is subject material to the operation of the System or a portion thereof; and

(iii) Seller has not received any notice or other communication (whether oral or written) from any Governmental Body or any other Person regarding any actual, alleged, possible or potential violation of, or failure to comply with, any

term or requirement of any Order to which Seller or any of the Assets is or has been subject, that has not already been resolved.

3.10(A) Absence of Certain Changes and Events.

(a) Except as set forth in Exhibit 3.10(A), since July 1, 2002, Seller has conducted its business only in the Ordinary Course of Business, there has not been any material adverse change in its business and in the operation of the System, and there has not been:

(i) Any damage to or destruction or loss of any Asset, whether or not covered by insurance that has not been replaced or which will not be replaced prior to the Effective Time; or

(ii) (to the extent the same might be material to the results of operations of the System or a portion thereof) a sale (other than sales of Inventories in the Ordinary Course of Business), lease or other disposition of any Asset or property of Seller (including the Intellectual Property Assets);

3.11 Contracts; No Defaults

(a) To the best of Seller's knowledge, Seller has delivered or made available to Buyer accurate and complete copies, of:

(i) each Seller Contract that involves performance of services or delivery of goods or materials by Seller of an amount or value in excess of $10,000;

(ii) each Seller Contract that involves performance of services or delivery of goods or materials to Seller of an amount or value in excess of $10,000;

(iii) each Seller Contract that was not entered into in the Ordinary Course of Business and that involves expenditures or receipts of Seller in excess of $10,000;

(iv) each Seller Contract affecting the ownership of, leasing of, title to, use of or any leasehold or other interest in any real or personal property (except personal property leases and installment and conditional sales agreements having a value per item or aggregate payments of less than $10,000 and with a term of less than one year);

(v) each Seller Contract with any labor union or other employee representative of a group of employees relating to wages, hours and other conditions of employment; each Seller Contract entered into other than in the

Ordinary Course of Business that contains or provides for an express undertaking by Seller to be responsible for consequential damages;

(vi) each Seller Contract for capital expenditures in excess of $10,000;

(vii) each Seller Contract not denominated in U.S. dollars;

(viii) each Seller Contract containing covenants that in any way purport to restrict Seller's business activity or limit the freedom of Seller to engage in any line of business or to compete with any Person;

(ix) each power of attorney of Seller that is currently effective and outstanding;

(x) each written warranty, guaranty, and/or similar undertaking with respect to contractual performance extended by Seller other than in the Ordinary Course of Business; and

(xi) each amendment, supplement and modification (whether oral or written) in respect of any of the foregoing.

(b) Except as set forth in Exhibit 7.3:

(i) each Contract which is to be assigned to or assumed by Buyer under this Agreement is in full force and effect and is valid and enforceable in accordance with its terms;

(ii) each Contract which is being assigned to or assumed by Buyer is assignable by Seller to Buyer without the consent of any other Person;

(c) Except as set forth in Exhibit 3.13 or 3.12:

(i) Seller is in compliance with all applicable terms and requirements of each Seller Contract which is being assumed by Buyer;

(ii) To Seller's knowledge, no event has occurred or circumstance exists that (with or without notice or lapse of time) may contravene, conflict with or result in a Breach of, or give Seller or other Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or payment under, or to cancel, terminate or modify, any Seller Contract that is being assigned to or assumed by Buyer;

(iii) To Seller's knowledge, no event has occurred or circumstance exists under or by virtue of any Contract that (with or without notice or lapse of time) would cause the creation of any Encumbrance affecting any of the Assets; and

(iv) Seller has not given to or received from any other Person any notice or other communication (whether oral or written) regarding any actual, alleged, possible or potential violation or Breach of, or default under, any Contract which is being assigned to or assumed by Buyer.

(d) There are no renegotiations of, attempts to renegotiate or outstanding rights to renegotiate any material amounts paid or payable to Seller under current or completed Contracts with any Person having the contractual or statutory right to demand or require such renegotiation and no such Person has made written demand for such renegotiation.

3.12 Environmental Matters

(a) Except as disclosed in Exhibit 3.13(a), Seller is in material compliance with and is not in material violation of or liable under, any Environmental Law. Seller has no basis to expect any actual or threatened order, notice or other communication from (i) any Governmental Body or private citizen acting in the public interest or (ii) the current or prior owner or operator of any Facilities, of any actual or potential violation or failure to materially comply with any Environmental Law, or of any actual or threatened obligation to undertake or bear the cost of any Environmental, Health and Safety Liabilities with respect to any Facility or other property or asset (whether real, personal or mixed) in which Seller has or had an interest, or with respect to any property or Facility at or to which Hazardous Materials were generated, manufactured, refined, transferred, imported, used or processed by Seller.

(b) Except as disclosed in Exhibit 3.13(b), there are no pending or, to the knowledge of Seller, threatened claims, Encumbrances, or other restrictions of any material nature resulting from any Environmental, Health and Safety Liabilities or arising under or pursuant to any Environmental Law with respect to or affecting any Facility or any other property or asset (whether real, personal or mixed) in which Seller has or had an interest.

(c) Except as disclosed in Exhibit 3.13(c), Seller has no knowledge of or any basis to expect nor has received, any citation, directive, inquiry, notice, Order, summons, warning or other communication that relates to Hazardous Activity, Hazardous Materials, or any alleged, actual, or potential violation or failure to materially comply with any Environmental Law, or of any alleged, actual, or potential obligation to undertake or bear the cost of any Environmental, Health and Safety Liabilities with respect to any Facility or property or asset (whether real, personal or mixed) in which Seller has or had an interest, or with respect to any property or facility to which Hazardous Materials generated, manufactured, refined, transferred, imported, used or processed by Seller have been transported, treated, stored, handled, transferred, disposed, recycled or received.

(d) Except as disclosed in Exhibit 3.13(d), Seller has no material Environmental, Health and Safety Liabilities with respect to any Facility or, to the

knowledge of Seller, with respect to any other property or asset (whether real, personal or mixed) in which Seller (or any predecessor) has or had an interest or at any property geologically or hydrologically adjoining any Facility or any such other property or asset.

(e) Except as disclosed in Exhibit 3.13(e), there are no Hazardous Materials present on or in the Environment at any Facility or at any geologically or hydrologically adjoining property, that are not in material compliance with Environmental Laws, including any Hazardous Materials contained in barrels, aboveground or underground storage tanks, landfills, land deposits, dumps, equipment (whether movable or fixed) or other containers, either temporary or permanent, and deposited or located in land, water, sumps, or any other part of the Facility or such adjoining property, or incorporated into any structure therein or thereon. Seller has not permitted or conducted, or is aware of, any Hazardous Activity conducted with respect to any Facility or any other property or assets (whether real, personal or mixed) in which Seller has or had an interest except in full compliance with all applicable Environmental Laws.

(f) Except as disclosed in Exhibit 3.13(f), there has been no Release or, to the knowledge of Seller, Threat of Release, of any Hazardous Materials at or from any Facility or at any other location where any Hazardous Materials were generated, manufactured, refined, transferred, produced, imported, used, or processed from or by any Facility, or from any other property or asset (whether real, personal or mixed) in which Seller has or had an interest, or to the knowledge of Seller any geologically or hydrologically adjoining property violation of any Environmental Law.

(g) Except as disclosed in Exhibit 3.13(g), Seller has delivered or made available to Buyer true and complete copies and results of any reports, studies, analyses, tests, or monitoring possessed or initiated by Seller pertaining to Hazardous Materials or Hazardous Activities in, on, or under the Facilities, or concerning compliance, by Seller with Environmental Laws including, but not limited to the environmental assessments listed in Exhibit 3.13

(h) Notwithstanding any provision contained herein to the contrary:

(i) Seller shall not be responsible for any costs associated with contamination which has come to be located on or below the Real Property solely as the result of subsurface migration from a contaminated aquifer from a source or sources outside the Real Property, provided that (a) the Seller did not cause, contribute to, or exacerbate the Release or threat of Release of the contaminants through an act or omission; (b) the person that caused the Release is not an agent or employee of the Seller, and was not in a direct or indirect contractual relationship with the Seller; and (c) there is no alternative basis for the Seller's liability for the contaminated aquifer, such as liability as a generator or transporter of hazardous substances under Section 107(a) (3) and (4) of the Federal Comprehensive Environmental Response Compensation and Liability Act

(CERCLA) or liability as an owner by reason of the existence of a source of contamination on the Seller's property other than the contamination that migrated in an aquifer from a source outside the Real Property.

(ii) Seller shall not be required to pay for the costs of rehabilitation of environmental contamination resulting from a discharge of petroleum products that is eligible for restoration funding from the Inland Protection Trust Fund pursuant to Chapter 376, Florida Statutes, in advance of commitment of restoration funding in accordance with the sites priority ranking pursuant to Section 376.3071(5)(a), Florida Statutes. In the event that Buyer determines that rehabilitation of petroleum contamination must occur earlier than the priority ranking established by the Florida Department of Environmental Protection, Buyer may request an assignment by Seller of all rights to reimbursement from the Inland Protection Trust Fund for such site and proceed with rehabilitation. Seller shall provide an assignment of all rights to reimbursement within ten (10) days of receipt of a request from a Buyer.

3.13 Employee Benefits

(a) Exhibit 3.131(a) contains and lists the following in connection with the current employees of the System: (i) any collective bargaining agreement not otherwise referenced in this Agreement or any employment agreement not terminable on thirty (30) days notice, (ii) each defined benefit plan and defined contribution plan, stock option or ownership plan, executive compensation, bonus, incentive compensation or deferred compensation plan, (iii) vacation pay, medical, dental, disability or death benefit plan, and (iv) any other employee benefit plan, program, arrangement, agreement or policy, including without limitation each "employee benefit plan" within the meaning of Section 3(3) of ERISA, in each case which is maintained or contributed to or by Seller, (collectively the "Employee Plans"). Seller will promptly deliver to Buyer true, accurate and complete copies of the documents comprising each Employee plan or, with respect to any Employee Plan which is unwritten, a detailed written description of eligibility, participation, benefits, funding arrangements, assets and any other matters which relate to the obligations of Seller.

(b) Except as shown on Exhibit 3.131(b), to the best of the Seller's knowledge and belief, neither Seller nor any fiduciary of an Employee Plan has engaged in a transaction with respect to any Employee Plan that, assuming the taxable period of such transaction expired as of the date hereof, could subject Seller or Buyer to a Tax or penalty imposed by either Section 4975 of the Code or Section 502(1) of ERISA or a violation of Section 406 of ERISA.

(c) Except as shown on Exhibit 3.131(c), the Seller has not incurred nor will incur with respect to any "employee benefit plan" as defined in Section 3(3) of ERISA any actual or contingent material liability, including, but not limited to, liability under Sections 601 through 608 of ERISA and Section 4980B of the Code, any withdrawal

liability from any multiemployer pension plan, any termination or withdrawal liability under Section 4062, 4063 or 4064 of ERISA, any "accumulated funding deficiency" as such term is defined in Section 302 of ERISA and Section 412 of the Code (whether or not waived), any requirement to make any contributions to any multiemployer plan, solely as a result of Seller being a member of a "controlled group" of corporations, or treated as a single employer with any other corporation, trade or business (whether or not incorporated) within the meaning of Section 414(b), 414(c) or 414(m) of the Code arising from or incurred with respect to any period prior to the Closing date.

(d) Except as shown on Exhibit 3.131(d), Seller has, at all times, complied, and currently complies, in all material respects with the applicable continuation requirements for its welfare plans, including (i) Section 4980B of the Code (as well as its predecessor provision, Section 162(k) of the Code) and Section 601 through 608, inclusive, of ERISA (collectively "COBRA") and (ii) any applicable state statutes mandating health insurance continuation coverage for employees.

(e) Except for the continuation coverage requirements of COBRA, and except as shown on Exhibit 3.131(e), Seller has no obligations or potential liability for benefits to employees, former employees or their respective dependents following termination of employment or retirement under any of the Employee Plans that are welfare benefit plans as defined in Section 3(1) of ERISA.

(f) Seller's 401(k) plan, entitled Florida Water Services Corporation Contributory Profit Sharing Plan ("Seller's 401(k) Plan") is intended to be qualified under Section 401(a) of the Code and the trust maintained pursuant thereto is intended to be exempt from federal income taxation under Section 501(a) of the Code and Seller is not aware of any Seller's 401(k) Plan provision or operation that would result in the disqualification of Seller's 401(k) Plan.

3.14 Intellectual Property Assets

(a) The term "Intellectual Property Assets" means all intellectual property owned or licensed (as licensor or licensee) by Seller in which Seller has a proprietary interest, including:

(iii) Seller's name, all assumed fictional business names, trade names, registered and unregistered trademarks, service marks and applications (collectively, "Marks");

(iv) all patents, patent applications and inventions and discoveries that may be patentable (collectively, "Patents");

(v) all registered and unregistered copyrights in both published works and unpublished works (collectively, "Copyrights");

(vi) all rights in mask works;

(vii) all know-how, trade secrets, confidential or proprietary information, customer lists, Software, technical information, data, process technology, plans, drawings and blue prints (collectively, "Trade Secrets"); and

(viii) all rights in internet web sites and internet domain names presently used by Seller (collectively "Net Names").

(b) Exhibit 3.14 contains a complete and accurate list and summary description and Seller has delivered to Buyer accurate and complete copies, of all Intellectual Property Assets, except for any license implied by the sale of a product and perpetual, paid-up licenses for commonly available Software programs with a value of less than $500 under which Seller is the licensee except as otherwise indicted on the foregoing exhibit. Except as set forth in Exhibit 3.14, the Intellectual Property Assets are all those necessary for the operation of Seller's business as it is currently conducted. Seller is the owner or licensee of all right, title and interest in and to each of the Intellectual Property Assets, free and clear of all Encumbrances, and has the right to use and transfer without payment to a Third Party all of the Intellectual Property Assets, other than in respect of licenses listed in Exhibit 3.14. To Seller's knowledge, no Intellectual Property Asset is infringed, or to Seller's knowledge, has been challenged or threatened in any way and does not infringe the intellectual property rights of any Third Party.

3.15 Brokers Or Finders

Neither Seller nor any of its Representatives have incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payments in connection with the sale of Seller's business or the Assets or the Contemplated Transactions.

3.16 Disclosure

(e) No material representation or warranty made by Seller in this Agreement contains any material untrue statement or omits to state a material fact necessary to make any of them, in light of the circumstances in which it was made, not misleading.

3.17 Employees

Exhibit 3.17(a) contains a complete and accurate list of the following information for each employee of Seller, including each employee on leave of absence or layoff status: name; job title; date of hiring or engagement; date of commencement of employment or engagement; current compensation paid or payable and any change in compensation since July 1, 2002; sick and vacation leave that is accrued but unused; and service credited for purposes of vesting and eligibility to participate under any Employee Benefit Plan, or any other employee plan, except as otherwise indicated on said exhibit.

3.18 Labor Disputes; Compliance

(a) Except as shown on Exhibit 3.18, Seller has complied in all material respects with all Legal Requirements relating to employment practices, terms and conditions of employment, equal employment opportunity, nondiscrimination, immigration, wages, hours, benefits, collective bargaining and other requirements under state of federal law, the payment of social security and similar Taxes and occupational safety and health. Seller is not liable for the payment of any Taxes, fines, penalties, or other amounts, however designated, for failure to comply with any of the foregoing Legal Requirements.

(b) Except as shown on Exhibit 3.18, (i) Seller has not been, and is not now, a party to any collective bargaining agreement or other labor contract; (ii) there has not been, there is not presently pending or existing, and to Seller's knowledge there is not threatened, any strike, slowdown, picketing, work stoppage or employee grievance process involving Seller; (iii) to Seller's knowledge no event has occurred or circumstance exists that could provide the basis for any work stoppage or other labor dispute; (iv) there is not pending or, to Seller's knowledge, threatened against or affecting Seller any Proceeding relating to the alleged violation of any Legal Requirement pertaining to labor relations or employment matters, including any charge or complaint filed with the National Labor Relations Board or any comparable Governmental Body, and there is no organizational activity or other labor dispute against or affecting Seller or the Facilities; (v) no application or petition for an election of or for certification of a collective bargaining agent is pending; (vi) no grievance or arbitration Proceeding exists that might have an adverse effect upon Seller or the conduct of its business; (vii) there is no lockout of any employees by Seller, and no such action is contemplated by Seller; and (viii) to Seller's knowledge there has been no pending charge of discrimination filed against or threatened against Seller with the Equal Employment Opportunity Commission or similar Governmental Body or any pending employment discrimination, wrongful discharge, retaliation lawsuits or lawsuits alleging whistle blowing.

3.19 Capital Program.

The Capital Improvement Plan Requirement includes sufficient moneys to satisfy all obligations owed by the Seller under developer agreements assumed by the Buyer.

3.20 Real Property Additional Representation and Warranty. That the Real Property is not subject to any Encumbrance (including Permitted Encumbrances) and no Survey Matter (as hereinafter defined) exists which (a) materially adversely affects the operation of the System or a portion thereof as operated on September 19, 2002 and the date hereof, as it will be operated on the date of Closing or (b) materially adversely affects the use of the improvements on such Real Property as used on September 19, 2002, on the date hereof and as it will be used on the date of Closing. "Survey Matter"

means any item shown on a survey obtained pursuant to Section 10.9 hereof. "Increased Cost" means costs that the Buyer incurs in constructing improvements on, above, or under the Real Property which it would not have incurred if the Encumbrances or Survey Matter did not exist.

To the best of Seller's knowledge, (a)no part of any material improvement on the Real Property encroaches on any real property not included in the Real Property, and there are no buildings, structures, fixtures or other Improvements primarily situated on adjoining property which materially encroach on any part of the Real Property, and (b) the Real Property on which there is a material plant or other facility abuts on and has direct vehicular access to a public road or has access to a public road via an appurtenant easement benefiting such Land, and is supplied with public or quasi-public utilities and other services appropriate for the operation of the Facilities located thereon.

3.21 Tie In and Deposits. Schedule 3.21 is a true and accurate statement of the matters set forth therein, and, in addition, is a true and accurate statement (a) of all credits that the Seller is obligated to give to persons (as described in Section 10.10 hereof) against Tie In Charges (as hereinafter defined) and (b) all Tie In Charges that are subject to an agreement pursuant to which the Seller has agreed to provide a Tie In at either no charge or for a fixed charge ("Fixed Charge Tie In's").

4. Representations and Warranties of Buyer

Buyer represents and warrants to Seller as follows:

4.1 Organization and Good Standing

Buyer is a governmental entity duly organized, validly existing and in good standing under the laws of the State of Florida, with full governmental power and authority to conduct its business as it is now conducted and to complete the transactions contemplated by this Agreement.

4.2 Authority; No Conflict

(a) This Agreement constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms. Upon the execution and delivery by Buyer of the agreements to be executed or delivered by Buyer at Closing (collectively, the "Buyer's Closing Documents"), each of the Buyer's Closing Documents will constitute the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its respective terms. Buyer has the absolute and unrestricted right, power and authority to execute and deliver this Agreement and the Buyer's Closing Documents and to perform its obligations under this Agreement and the Buyer's Closing Documents, and such action has been duly authorized by all necessary corporate actions

(b) Neither the execution and delivery of this Agreement by Buyer nor the consummation or performance of any of the Contemplated Transactions by Buyer will give any Person the right to prevent, delay or otherwise interfere with any of the Contemplated Transactions pursuant to:

(i) any provision of Buyer's Governing Documents;

(ii) any resolution adopted by the board of directors or the shareholders of Buyer;

(iii) any Legal Requirement or Order to which Buyer may be subject; or

(iv) any Contract to which Buyer is a party or by which Buyer may be bound.

Buyer is not and will not be required to obtain any Consent from any Person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the Contemplated Transactions.

4.3 Certain Proceedings

Except as shown on Exhibit 4.3 hereto, there is no pending Proceeding that has been commenced against Buyer and that challenges, or may have the effect of preventing, delaying, making illegal or otherwise interfering with, any of the Contemplated Transactions. To Buyer's knowledge, except as set forth on Exhibit 4.3, no such Proceeding has been threatened.

4.4 Brokers Or Finders

Neither Buyer nor any of its Representatives have incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with the Contemplated Transactions.

4.5 Original Representations and Warranties. The representations and warranties of the Buyer contained in the Original Agreement were true and accurate when made and Seller is in compliance with its duties and obligations set forth in the Original Agreement as of the date hereof.

5. Covenants of Seller Prior to Closing

5.1 Access and Investigation

Between the date of this Agreement and the Closing Date, and upon reasonable advance notice received from Buyer and subject to any applicable confidentiality obligations, Seller shall (a) afford Buyer and its Representatives and prospective lenders,

underwriters, and their Representatives (collectively, "Buyer Group") full and free access, during regular business hours, to Seller's personnel, properties (including subsurface testing), contracts, Governmental Authorizations, books and Records and other documents and data, such rights of access to be exercised in a manner that does not unreasonably interfere with the operations of Seller; (b) furnish Buyer Group with copies of all such contracts, Governmental Authorizations, books and Records and other existing documents and data as Buyer may reasonably request; (c) furnish Buyer Group with such additional financial, operating and other relevant data and information as Buyer may reasonably request; and (d) otherwise cooperate and assist, to the extent reasonably requested by Buyer, with Buyer's investigation of the properties, assets and financial condition related to Seller. In addition, Buyer shall have the right to have the Real Property and Tangible Personal Property inspected by Buyer Group, at Buyer's sole cost and expense, for purposes of determining the physical condition and legal characteristics of the Real Property and Tangible Personal Property. In the event subsurface or other destructive testing is recommended by any of Buyer Group, Buyer shall be permitted to have the same performed with the prior consent of Seller, which shall not be unreasonably withheld.

5.2 Operation of the Business of Seller

Between September 19, 2002 and the Closing, Seller:

(a) shall conduct and shall have conducted its business in the Ordinary Course of Business;

(b) except as otherwise directed by Buyer in writing, and without making any commitment on Buyer's behalf, shall use and shall have used its Best Efforts to preserve intact its current business organization, keep available the services of its officers, employees and agents and maintain its relations and good will with suppliers, customers, landlords, creditors, employees, agents and others having business relationships with it;

(c) shall have conferred and shall confer with Buyer prior to implementing operational decisions of a material nature;

(d) otherwise shall have reported and shall report periodically to Buyer concerning the status of its business, operations and finances;

(e) shall not make and not make any material changes in senior management personnel identified by Buyer in Section 2.7, without prior consultation with Buyer;

(f) shall have maintained and shall maintain the Assets in a state of repair and condition that complies with Legal Requirements and is consistent with the requirements and normal conduct of Seller's business;

(g) shall have kept and shall keep in full force and effect, without amendment, all rights relating to Seller's business;

(h) shall have complied and shall comply with all Legal Requirements and contractual obligations applicable to the operations of Seller's business;

(i) shall have cooperated and shall cooperate with Buyer and shall have assisted and shall assist Buyer in identifying the Governmental Authorizations required by Buyer to operate the business from and after the Closing Date and either transferring existing Governmental Authorizations of Seller to Buyer, where permissible, or obtaining new Governmental Authorizations for Buyer;

(j) upon request from time to time, shall have executed and delivered and shall execute and deliver all documents, shall have made and shall make all truthful oaths, testify in any Proceedings and do all other acts that may be reasonably necessary to consummate the Contemplated Transactions, all without further consideration; and

(k) shall have maintained and shall maintain all books and Records of Seller relating to Seller's business in the Ordinary Course of Business.

5.3 Negative Covenant

Except as otherwise expressly permitted herein, between the date of this Agreement and the Closing Date, Seller shall not without the prior written consent of Buyer which shall not be unreasonably withheld and which shall be promptly acted upon by Buyer, (a) make any modification to any material Seller Contract or Governmental Authorization; or (b) allow the levels of raw materials, supplies or other materials included in the Inventories to vary materially from the levels customarily maintained.

5.4 Required Approvals

Seller has made and shall continue to make the reasonably required filings necessary to be made by it in order to consummate the Contemplated Transactions. Seller also shall cooperate with Buyer and its Representatives with respect to all filings that Buyer elects to make or, pursuant to Legal Requirements, shall be required to make in connection with the Contemplated Transactions. Seller also shall cooperate with Buyer and its Representatives in obtaining all Material Consents.

5.5 Notification

Between the date of this Agreement and the Closing, Seller shall promptly notify Buyer in writing if any of them becomes aware of (a) any fact or condition that causes or constitutes a Breach of any of Seller's representations and warranties herein as of the date of this Agreement or (b) the occurrence after the date of this Agreement of any fact or condition that would or be reasonably likely to (except as expressly contemplated by this

Agreement) cause or constitute a Breach of any such representation or warranty had that representation or warranty been made as of the time of the occurrence of, or Seller's discovery of, such fact or condition. During the same period, Seller also shall promptly notify Buyer of the occurrence of any Breach of any covenant of Seller in this Article 5 or of the occurrence of any event that may make the satisfaction of the conditions in Article 7 impossible or unlikely.

5.6 No Negotiation

Until such time as this Agreement shall be terminated pursuant to Section 9.1, Seller shall not directly or indirectly solicit, initiate, encourage or entertain any inquiries or proposals from, discuss or negotiate with, provide any nonpublic information to or consider the merits of any inquiries or proposals from any Person (other than Buyer) relating to any business combination transaction involving Seller or the System (other than in the Ordinary Course of Business).

5.7 Best Efforts

Seller shall use their Best Efforts to cause the conditions in the Agreement to be satisfied and on or before the Closing. Seller shall further as soon as practical after the Closing (a) amend its Governing Documents and take all other actions necessary to change its name to one sufficiently dissimilar to Seller's present name, in Buyer's judgment, to avoid confusion and (b) take all actions requested by the Buyer so that Buyer can either assume such name as an assumed name or to change its name to Seller's present name.

5.8 Payment Of Liabilities

Seller shall pay or otherwise satisfy in the Ordinary Course of Business all of its Liabilities and obligations as they come due.

5.9 Current Evidence of Title

(a) Seller has furnished to Buyer, at Seller's expense,

(i) from Commonwealth Land Title Insurance Company (the "Title Policy") (the "Title Insurer"):

(1) a title commitment or title commitments issued by the Title Insurer to insure title to each parcel listed therein (which Seller warrants is all real property that Seller owns or owned as of September 19, 2002 in fee simple other than such real property that is an Excluded Asset), in the aggregate amount of $466,500,000, subject to adjustment as provided in Section 2.3(B), naming Buyer as the proposed insured and having the effective dates as set forth therein, wherein the Title Insurer has agreed to

issue an ALTA form owner's title insurance policy 1992 (10-17-92) with Florida modifications (collectively the "Title Commitment"); and

(2) copies of all recorded documents listed as Schedule B-1 matters to be terminated or satisfied in order to issue the policy described in the Title Commitment or as special Schedule B-2 exceptions thereunder (the "Recorded Documents").

(b) The Title Commitment includes the Title Insurer's requirements for issuing its title policy, which requirements shall be met by Seller on or before the Closing Date (including those requirements that must be met by releasing or satisfying monetary Encumbrances, but excluding Encumbrances that will remain after Closing as agreed to by the Buyer and those requirements that are to be met solely by Buyer).

(c) If any of the following shall occur (collectively, a "Title Objection"):

(i) The Title Commitment or other evidence of title or search of the appropriate real estate records discloses that any party other than Seller has title to the insured estate covered by the Title Commitment;

(ii) any title exception is disclosed in Schedule B to any Title Commitment that is not one of the Permitted Real Estate Encumbrances or one that Seller specifies when delivering the Title Commitment to Buyer as one that Seller will cause to be deleted from the Title Commitment concurrently with the Closing, including (A) any exceptions that pertain to Encumbrances securing any loans and (B) any exceptions that Buyer reasonably believes could materially and adversely affect Buyer's use and enjoyment of the Land described therein; or

(iii) any survey discloses any matter that Buyer reasonably believes could materially and adversely affect Buyer's use and enjoyment of the Land described therein;

then Buyer shall notify Seller in writing ("Buyer's Notice") of such matters by December 31, 2002. Notwithstanding the foregoing, the surveys referenced in (iii) of the previous sentence will be obtained after the Closing pursuant to Section 10.9 and the Buyer shall, upon obtaining such survey and for a reasonable time thereafter, have the right to object to any matter to which it could have objected to under said part (iii) by delivering a written notice to the Seller and such matter shall be a Title Objection as set forth above.

(d) Seller shall use its Best Efforts to cure each Title Objection and take all steps required by the Title Insurer to eliminate each Title Objection as an exception to the Title Commitment. In the event that the Title Objection arises after the Closing, then the Seller shall use its Best Efforts to cure such Title Objection and take all steps required by the Title Insurer to amend the title policy previously issued as required herein to

eliminate such Title Objection. Any Title Objection that the Title Company is willing to insure over on terms acceptable to Seller and Buyer is herein referred to as an "Insured Exception." The Insured Exceptions, together with any title exception or matters disclosed by the Survey not objected to by Buyer in the manner aforesaid shall be deemed to be acceptable to Buyer.

(e) Nothing herein waives Buyer's right to claim a breach of Section 3.9(a) or to claim a right to indemnification as provided in Section 11.2 if Buyer suffers material Damages as a result of a misrepresentation with respect to the condition of title to the Land.

(f) Seller shall use its best efforts to comply with the requirements of Schedule B Section 1 of the Title Commitment. At the Closing, Seller shall identify any Schedule B Section 1 requirements that cannot be satisfied as of the Closing. Seller and Buyer shall agree on a post-Closing process to satisfy these requirements (the "Post-Closing Schedule B Requirements"). Seller shall indemnify the Buyer as to all Post-Closing Schedule B requirements that are not satisfied in accordance with the agreed upon post-Closing process.

6. Covenants of Buyer Prior to Closing

6.1 Required Approvals

As promptly as practicable after the date of this Agreement, Buyer shall make, or cause to be made, all filings required by Legal Requirements to be made by it to consummate the Contemplated Transactions. Buyer also shall cooperate, and cause its Related Persons to cooperate, with Seller (a) with respect to all filings Seller shall be required by Legal Requirements to make and (b) in obtaining all Consents identified in Exhibit 7.3, provided, however, that Buyer shall not be required to dispose of or make any change to its business, expend any material funds or incur any other material burden in order to comply with this Section 6.1.

6.2 Best Efforts

Buyer shall use its Best Efforts to cause the conditions in this Agreement to be satisfied.

7. Conditions Precedent to Buyer's Obligation to Close

Buyer's obligation to purchase the Assets and to take the other actions required to be taken by Buyer at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Buyer, in whole or in part):

7.1 Accuracy of Representations

(a) All of Seller's representations and warranties in this Agreement (considered collectively), and each of these representations and warranties (considered individually), shall have been accurate as of the Exhibit Delivery Date, and shall be accurate in all material respects as of the time of the Closing as if then made.

(b) Each of the representations and warranties in Sections 3.2(a) and 3.4, and each of the representations and warranties in this Agreement that contains an express materiality qualification, shall be accurate in all respects as of the time of the Closing as if then made.

7.2 Seller's Performance

All of the covenants and obligations that Seller are required to perform or to comply with pursuant to this Agreement at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), shall have been duly performed and complied with in all material respects.

7.3 Consents

Each of the Material Consents to be identified by Buyer and agreed to by Seller in Exhibit 7.3 prior to Closing (the "Material Consents") shall have been obtained and shall be in full force and effect.

7.4 Additional Documents

Seller shall have caused the documents and instruments required by Section 2.7(a) and the following documents to be delivered (or made available) to Buyer:

(a) The articles of incorporation and all amendments thereto of Seller, duly certified as of a recent date by the Secretary of State;

(b) A legal opinion reasonably satisfactory to Buyer; and

(c) Such other documents as Buyer may reasonably request for the purpose of:

(i) evidencing the accuracy of any of Seller's representations and warranties;

(ii) evidencing the performance by Seller of, or the compliance by Seller with, any covenant or obligation required to be performed or complied with by Seller;

(iii) evidencing the satisfaction of any condition referred to in this Article 7;

(iv) otherwise facilitating the consummation or performance of any of the Contemplated Transactions; or

(v) evidence showing the release of all liens, security interests, and other encumbrances other than Permitted Encumbrances (but excluding any Permitted Encumbrances that encumber the Assets held by any entity which has provided or may provide financing to the Seller)

7.5 No Conflict

Neither the consummation nor the performance of any of the Contemplated Transactions will, directly or indirectly, materially contravene or conflict with or result in a material violation of or cause Buyer or any Related Person of Buyer to suffer any material adverse consequence under (a) any applicable Legal Requirement or Order or (b) any valid Legal Requirement or Order that has been entered by any Governmental Body.

7.6 Line of Credit. Seller shall have caused ALLETE, Inc., to execute and deliver to the Buyer an agreement in the form and substance of Exhibit 7.6 hereto.

8. Conditions Precedent to Seller's Obligation to Close

Seller's obligation to sell the Assets and to take the other actions required to be taken by Seller at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Seller in whole or in part):

8.1 Accuracy of Representations

All of Buyer's representations and warranties in this Agreement (considered collectively), and each of these representations and warranties (considered individually), shall have been accurate in all material respects as of the date of this Agreement and shall be accurate in all material respects as of the time of the Closing as if then made.

8.2 Buyer's Performance

All of the covenants and obligations that Buyer is required to perform or to comply with pursuant to this Agreement at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), shall have been performed and complied with in all material respects.

8.3 Additional Documents

Buyer shall have caused a legal opinion satisfactory to Seller to be supplied and the documents and instruments required by Section 2.7(b) and the following documents to be delivered or made available to Seller:

(a) such other documents as Seller may reasonably request for the purpose of:

(i) evidencing the accuracy of any representation or warranty of Buyer,

(ii) evidencing the performance by Buyer of, or the compliance by Buyer with, any covenant or obligation required to be performed or complied with by Buyer or

(iii) evidencing the satisfaction of any condition referred to in this Article

8.4 No Injunction

There shall not be in effect any Legal Requirement or any injunction or other Order that (a) prohibits the consummation of the Contemplated Transactions and (b) has been adopted or issued, or has otherwise become effective, since the date of this Agreement.

9. Termination

9.1 Termination Events

By notice given prior to or at the Closing, subject to Section 9.2, this Agreement may be terminated as follows:

(a) by Buyer if a material Breach of any provision of this Agreement has been committed by Seller and such Breach has not been waived by Buyer;

(b) by Seller if a material Breach of any provision of this Agreement has been committed by Buyer and such Breach has not been waived by Seller;

(c) by Buyer if any condition in Article 7 has not been satisfied as of the date specified for Closing in the first sentence of Section 2.6 or if satisfaction of such a condition by such date is or becomes impossible (other than through the failure of Buyer to comply with its obligations under this Agreement), and Buyer has not waived such condition on or before such date;

(d) by Seller if any condition in Article 8 has not been satisfied as of the date specified for Closing in the first sentence of Section 2.6 or if satisfaction of such a condition by such date is or becomes impossible (other than through the failure of Seller to comply with its obligations under this Agreement), and Seller has not waived such condition on or before such date;

(e) by mutual consent of Buyer and Seller;

(f) by Buyer if the Closing has not occurred on or before February 14, 2003 or such later date as the parties may agree upon, unless the Buyer is in material Breach of this Agreement; or

(g) by Seller if the Closing has not occurred on or before February 14, 2003 or such later date as the parties may agree upon, unless the Seller is in material Breach of this Agreement.

(h) by Seller if the amount of Purchase Price Installment 1 is less than $400,000,000 as of the date of pricing of the Closing Bonds.

9.2 Effect Of Termination

Each party's right of termination under Section 9.1 is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of such right of termination will not be an election of remedies. If this Agreement is terminated pursuant to Section 9.1, all obligations of the parties under this Agreement will terminate, except that the obligations of the parties in this Section 9.2 and Articles 12 and 13 (except for those in Section 13.5) will survive, provided, however, that, if this Agreement is terminated because of a Breach of this Agreement by the non-terminating party or because one or more of the conditions to the terminating party's obligations under this Agreement is not satisfied as a result of the party's failure to comply with its obligations under this Agreement, the terminating party's right to pursue all legal remedies will survive such termination unimpaired. Furthermore, notwithstanding any such termination, the Seller shall immediately upon termination pay to the Buyer the Due Diligence Amount.

Neither Buyer nor Seller shall be liable to the other in the event that after the execution of this Agreement there occurs (i) a change of law that prevents the Closing, (ii) any action by a third party that prevents the Closing or (iii) any order by a Governmental Agency or court that prevents the Closing. Both parties agree to diligently defend against a third party attempt to prevent a Closing.

10. Additional Covenants

10.1 Employees and Employee Benefits

(a) Information on Active Employees. For the purpose of this Agreement, the term "Active Employees" shall mean all individuals employed by Seller on the Closing Date by , including employees on temporary leave of absence, including family medical leave, military leave, temporary disability or sick leave, but excluding employees on long-term disability leave.

(b) Employment of Active Employees by Buyer.

(i) Buyer will make offers of employment to all employees are legally eligible for employment in the United States . Buyer will provide Seller with a list of Active Employees to whom Buyer has made an offer of employment that has been accepted to be effective on the Closing Date (the "Hired Active Employees"). Subject to Legal Requirements, Buyer will have reasonable access to the Facilities and personnel Records (including performance appraisals, disciplinary actions, grievances and medical Records) of Seller for the purpose of preparing for and conducting employment interviews with all Active Employees and will conduct the interviews as expeditiously as possible prior to the Closing Date. Access will be provided by Seller upon reasonable prior notice during normal business hours. Effective immediately before the Closing, Seller will terminate the employment of all Hired Active Employees.

(ii) Neither Seller nor its Related Persons shall solicit the continued employment of any Active Employee (unless and until Buyer has informed Seller in writing that the particular Active Employee will not receive any employment offer from Buyer) or the employment of any Hired Active Employee after the Closing who are still employed by Buyer. Buyer shall inform Seller promptly of the identities of those Active Employees to whom it will not make employment offers, and Seller shall comply with the WARN Act as to those Active Employees. Buyer consents to the Seller giving WARN Act notice, if it elects to do so, as provided under law.

(iii) It is understood and agreed that (A) Buyer's expressed intention to extend offers of employment as set forth in this section shall not constitute any commitment, Contract or understanding (expressed or implied) of any obligation on the part of Buyer to a post-Closing employment relationship of any fixed term or duration or upon any terms or conditions other than those set forth herein that Buyer may establish pursuant to individual offers of employment, and (B) employment offered by Buyer will be "at will" and may be terminated by Buyer or by an employee at any time for any reason (subject to any written commitments to the contrary made by Buyer or an employee and Legal Requirements). Nothing in this Agreement shall be deemed to prevent or restrict in any way the right of Buyer to terminate, reassign, promote or demote any of the Hired Active Employees after the Closing or to change adversely or favorably the title, powers, duties, responsibilities, functions, locations, salaries, other compensation or terms or conditions of employment of such employees.

(c) Salaries and Benefits.

(i) Seller shall be responsible for (A) the payment of all wages and other remuneration due to Active Employees with respect to their services as employees of Seller through the close of business on the Closing Date, ; (B) the payment of any termination or severance payments and the provision of health plan continuation coverage in accordance with the requirements of COBRA and

Sections 601 through 608 of ERISA, or may be required by Seller by law or contract; and (C) any and all payments to employees required under the WARN Act as a result of the contemplated transactions Notwithstanding the foregoing provisions, and solely for the purpose of ensuring the payment of wages to Active Employees only on the actual date of Closing, the Seller shall be responsible for the payment of wages with respect to Active Employees for any workshift beginning prior to 12:00 a.m. on the date of Closing and which workshifts end after 12:01 a.m. on the date of Closing.

(ii) Seller shall be liable for any claims made or incurred by Active Employees and their beneficiaries through the Closing Date under the Employee Plans. For purposes of the immediately preceding sentence, a claim will be deemed incurred, in the case of hospital, medical or dental benefits, when the services that are the subject of the charge are performed and, in the case of other benefits (such as disability or life insurance), when an event has occurred or when a condition has been diagnosed that entitles the employee to the benefit.

(d) Terms of Employment. Buyer will set its own initial terms and conditions of employment for the Hired Active Employees and others it may hire, including work rules, benefits and salary and wage structure, all as permitted by law, provided such terms and conditions shall be in the aggregate substantially similar in value to the terms and conditions of such Hired Active Employees under the Seller's employ as disclosed to Buyer herein. Buyer is not obligated to assume any collective bargaining agreements under this Agreement. Seller shall be solely liable for any severance payment required to be made to its employees due to the Contemplated Transactions. Any bargaining obligations of Buyer with any union with respect to bargaining unit employees subsequent to the Closing, whether such obligations arise before or after the Closing, shall be the sole responsibility of Buyer.

(f) General Employee Provisions.

(i) Seller and Buyer shall give any notices required by Legal Requirements and take whatever other actions with respect to the plans, programs and policies described in this Section 10.1 as may be necessary to carry out the arrangements described in this Section 10.1.

(ii) Seller and Buyer shall provide each other with such plan documents and summary plan descriptions, employee data or other information as may be reasonably required to carry out the arrangements described in this Section 10.1.

(iii) If any of the arrangements described in this Section 10.1 are determined by the IRS or other Governmental Body to be prohibited by law, Seller and Buyer shall modify such arrangements to as closely as possible reflect their expressed intent and retain the allocation of economic benefits and burdens to the parties contemplated herein in a manner that is not prohibited by law.

(iv) Seller shall provide Buyer with completed 1-9 forms and attachments with respect to all Hired Active Employees, except for such employees as Seller certifies in writing to Buyer are exempt from such requirement.

(v) Buyer shall not have any responsibility, liability or obligation, whether to Active Employees, former employees, their beneficiaries or to any other Person, with respect to any employee benefit plans, practices, programs or arrangements (including the establishment, operation or termination thereof and the notification and provision of COBRA coverage extension) maintained by Seller.

(vi) Seller will require certain assistance from certain Hired Active Employees to process post-Closing obligations of Seller, including, but not limited to, filings with the Florida Public Service Commission and other regulatory agencies and federal wage and tax filings (collectively the "Post-Closing Obligations"), and Buyer agrees to provide the services of such necessary employees to assist Seller with its Post-Closing Obligations. Such assistance shall not unreasonably interfere with the necessary employees' regular duties for Buyer. As consideration to Buyer for assistance with Seller's Post-Closing Obligations, Seller shall pay Buyer the sum of Fifty Thousand Dollars ($50,000.00), which sum shall be credited to Buyer at the Closing.

10.2 Payment of all Taxes Resulting From Sale of Assets by Seller

Seller shall pay in a timely manner all Taxes resulting from or payable in connection with the sale of the Assets pursuant to this Agreement, regardless of the Person on whom such Taxes are imposed by Legal Requirements.

10.3 Payment of Other Retained Liabilities

In addition to payment of Taxes pursuant to Section 10.2, Seller shall pay, or make adequate provision for the payment, in full all of the Retained Liabilities and other Liabilities of Seller under this Agreement. If any such Liabilities are not so paid or provided for, or if Buyer reasonably determines that failure to make any payments will impair Buyer's use or enjoyment of the Assets or conduct of the business previously conducted by Seller with the Assets, Buyer may, upon ten (10) days notice, at any time after the Closing Date, elect to make all such payments directly (but shall have no obligation to do so) and set off and deduct the full amount of all such payments from the maturing payments due from Buyer to Seller or as provided for from the Capital Charges owing to Seller.

10.4 Removing Excluded Assets

Within sixty (60) days after the Closing Date, Seller shall remove all Excluded Assets (other than the Capital Charges provided for in Section 2.2 hereof) from all Facilities and other Land to be occupied by Buyer. Such removal shall be done in such manner as to avoid any damage to the Facilities and other properties to be occupied by Buyer and any disruption of the business operations to be conducted by Buyer after the Closing. Any damage to the Assets or to the Facilities resulting from such removal shall be paid by Seller. Should Seller fail to remove the Excluded Assets as required by this Section, Buyer shall have the right, but not the obligation, (a) to remove the Excluded Assets at Seller's sole cost and expense; (b) to store the Excluded Assets and to charge Seller all storage costs associated therewith; (c) to treat the Excluded Assets as unclaimed and to proceed to dispose of the same under the laws governing unclaimed property; or (d) to exercise any other right or remedy conferred by this Agreement or otherwise available at law or in equity. Seller shall promptly reimburse Buyer for all costs and expenses incurred by Buyer in connection with any Excluded Assets not removed by Seller on or before the Closing Date.

10.5 Reports and Returns

Seller shall promptly after the Closing prepare and file all reports and returns required by Legal Requirements relating to the business of Seller as conducted using the Assets, to and including the Effective Time.

10.6 Assistance in Proceedings

Seller will cooperate with Buyer and its counsel in the contest or defense of, and make available its personnel and provide any testimony and access to its books and Records in connection with, any Proceeding involving or relating to (a) any Contemplated Transaction or (b) any action, activity, circumstance, condition, conduct, event, fact, failure to act, incident, occurrence, plan, practice, situation, status or transaction on or before the Closing Date involving Seller or its business.

10.7 Retention of and Access to Records

After the Closing Date, Buyer shall retain for a period consistent with Buyer's record-retention policies and practices those Records of Seller delivered to Buyer. Buyer also shall provide Seller and their Representatives reasonable access thereto, during normal business hours to enable them to prepare financial statements or tax returns or deal with tax audits. After the Closing Date, Seller shall provide Buyer and its Representatives reasonable access to Records that are Excluded Assets, during normal business hours for any reasonable business purpose specified by Buyer in such notice.

10.8 Further Assurances

Subject to the proviso in Section 6.1, the parties shall cooperate reasonably with each other and with their respective Representatives in connection with any steps required to be taken as part of their respective obligations under this Agreement, and shall (a) furnish upon request to each other such further information; (b) execute and deliver to each other such other documents; and (c) do such other acts and things, all as the other party may reasonably request for the purpose of carrying out the intent of this Agreement and the Contemplated Transactions.

10.9 Environmental and Real Estate Matters. The Buyer shall have the right at Seller's expense, but not the obligation, to do Phase 1 environmental site assessments and studies and regulatory compliance audits on the Real Property and other assets of the Seller (whether or not located on the Real Property) (collectively, "Environmental Property") as Buyer may determine. The foregoing pursuant to this Section shall be accomplished within nine (9) months after the Closing. For 90 days after the Buyer has received all the foregoing it desires to obtain pursuant to the first sentence of this Section, the Buyer shall have the right at Seller's expense, but not the obligation, to do such further environmental studies and assessments (including soil and surface water and ground water testing) and regulatory compliance audits on the Environmental Property based on the recommendations contained in such Phase 1's or in subsequent reports issued by the environmental consultant(s) on the Environmental Property which reports were obtained pursuant to this Section. The foregoing 90 day period set forth in the previous sentence shall be extended to a time period within which the environmental assessments, studies and audits can reasonably be completed if such environmental studies cannot be completed within such time period because of extraordinary circumstances (such as a Phase 2 assessment recommending a Phase 3 assessment being done, test results not being promptly available, test results only being obtainable if higher than normal fees are paid, or testing being of such a nature that such testing takes more time than testing usually takes as a general matter).

The Buyer shall have the right at Seller's expense, but not the obligation, to do such surveys on the Real Property as Buyer reasonably determines have situated on it valuable improvements or has on it improvements that are significant to the operation of the System and excluding the following property: (1) lift station property with an assessed value less than $150,000, and (2) unimproved parcels in excess of a 1/4 acre. Buyer will not cause any surveys to be paid for by the Seller if the individual cost of such survey is in excess of $10,000, unless either (1) the buyer has reasonable cause to believe the survey will show a material encroachment or excroachment or (2) such property does in fact bear a material encroachment or excroachment. Prior to undertaking any such surveys, Buyer shall notify Seller in writing and Seller shall have the right to object in writing to Buyer's determination if Seller concludes that Buyer's determination was not reasonable, for ten (10) days after receipt thereof (and if Seller fails to so object, Seller

will be deemed to have agreed to Buyer's determination). If Seller and Buyer cannot resolve such dispute, then whether such determination is reasonable shall be determined in accordance with the dispute resolution provisions hereof. Buyer's right to do surveys under this paragraph shall expire three (3) years after the Closing.

All such environmental studies and assessments and regulatory compliance audits and surveys done pursuant to this Section shall be at the sole cost and expense of the Seller and Seller agrees to reimburse Buyer for the costs and expenses incurred by Buyer under this Section. As provided above, Seller will deposit with Buyer $200,000.00 to be held by Buyer for the purposes of reimbursing the Buyer for costs and expenses incurred pursuant to this Section. Buyer agrees to first utilize such money before requesting Seller to directly reimburse it for such costs and expenses.

10.10 Fixed Tie-In's and Tie-In Deposits. Seller has supplied to Buyer documents pursuant to this Agreement relating to obligations that the Seller has to provide a Fixed Charge Tie In (as defined in Section 3.21) (the "Tie In Documents") and the amount which the Buyer would receive under a Fixed Charge Tie In may be less than the Buyer would, but for this section charge, for such Individual Tie-In (as defined in Section 3.21). Although Buyer is not under this Agreement assuming such obligations, Buyer does hereby agree to provide utility service to persons who would otherwise have received service from Seller under the Tie In Documents, and to further provide Individual Tie In's at the Fixed Charge Tie In to the Person entitled to receive such Fixed Charge Tie In from the Seller, provided that the representations and warranties of the Seller set forth in Section 3.21 are true and accurate.

Furthermore, Seller has supplied to Buyer documents pursuant to this Agreement relating to deposits ("Vendee Deposit") made by land contract vendees ("Deposit Vendee") pursuant to land contracts for which deposits the Seller has agreed to give the relevant Deposit Vendee a credit equal to such deposits made by such Deposit Vendee against Tie In Charges which such Deposit Vendee would have to pay at the time it obtains water and/or sewage service from the System. After Closing, some of such Deposit Vendees will continue to make such deposits and Seller agrees to promptly after Closing take such action to cause all such future deposits to be paid to the Buyer and shall supply the Buyer with evidence that it has done so. Although Buyer is not under this Agreement assuming such obligations, Buyer does hereby agree that it will provide utility service to such Deposit Vendees and shall give the relevant Deposit Vendee a credit against Tie In Charges at the time it supplies such Deposit Vendee an Individual Tie In, which credit will be in an amount equal to that which the Seller is, at the Effective Time obligated to give the relevant Deposit Vendee plus the amount of deposits that the Buyer receives after the Effective Time from such Deposit Vendee pursuant to this paragraph, provided that the representation and warranty set forth in Section 3.21 hereof is true and accurate.

10.11 Customer Deposits.

At Closing, Seller shall transfer to the Buyer by electronic fund transfer all funds in customer deposit accounts ("Customer Deposits"), including any interest earned, accrued or due thereon through the Closing Date. Upon receipt of the Customer Deposits, Buyer will assume responsibility for maintaining accurate books and records of the funds and for repaying the Deposits in accordance with the standards and procedures adopted by the Buyer.

10.12 Regulatory Transfer Contingency.

The sale and transfer of the Assets pursuant to this Agreement is contingent upon approval by the Florida Public Service Commission and the other applicable County Regulatory Agencies. Pursuant to Section 163.01(7)(g), Florida Statutes, Section 367.071(4)(a), Florida Statutes, and prior legal precedent, such approvals may be obtained after Closing and must be granted as a matter of right.

11. Indemnification; Remedies

11.1 Survival

All representations, warranties, covenants and obligations in this Agreement, the certificates delivered pursuant to Section 2.7 and any other certificate or document delivered pursuant to this Agreement shall survive the Closing and the consummation of the Contemplated Transactions, subject to Section 11.7. The right to indemnification, reimbursement or other remedy based upon such representations, warranties, covenants and obligations shall not be affected by any investigation (including any environmental investigation or assessment) conducted with respect to, or any knowledge acquired at any time, whether before or after the execution and delivery of this Agreement or the Closing Date, with respect to the accuracy or inaccuracy of or compliance with any such representation, warranty, covenant or obligation. The waiver of any condition based upon the accuracy of any representation or warranty, or on the performance of or compliance with any covenant or obligation, will not affect the right to indemnification, reimbursement or other remedy based upon such representations, warranties, covenants and obligations. For purposes of this Article 11, whenever the phrases "to Seller's knowledge", "to the best of Seller's knowledge", "to the knowledge of Seller", or any similar phrase, or whenever the words "material" or "materially" are used in this Agreement (other than in this Article 11), such words and phrases shall be disregarded for purposes of this Article 11 and indemnification hereunder as if such words or phrases were stricken from this Agreement.

11.2 Indemnification and Reimbursement by Seller

Seller will indemnify and hold harmless Buyer, and its Representatives, shareholders, subsidiaries and Related Persons (collectively, the "Buyer Indemnified Persons"), and will reimburse the Buyer Indemnified Persons for any loss, liability, claim, damage, expense (including costs of investigation and defense and reasonable attorneys' fees and expenses) or diminution of value, whether or not involving a Third-Party Claim (collectively, "Damages") (but not including any Damages recovered by the offsets for the Remedial Capital Project Amount), arising from or in connection with:

(a) any Breach of any representation or warranty made by Seller in (i) this Agreement (without giving effect to any supplement thereto), (ii) the certificates delivered pursuant to Section 2.7 (for this purpose, each such certificate will be deemed to have stated that Seller's representations and warranties in this Agreement fulfill the requirements of Section 7.1 as of the Closing Date as if made on the Closing Date without giving effect to any supplement thereto, unless the certificate expressly states that the matters disclosed in a supplement have caused a condition specified in Section 7.1 not to be satisfied), (v) any transfer instrument or (vi) any other certificate, document, writing or instrument delivered by Seller pursuant to this Agreement;

(b) any Breach of any covenant or obligation of Seller in this Agreement or in any other certificate, document, writing or instrument delivered by Seller pursuant to this Agreement;

(c) (1) Any Liability arising out of the ownership or operation of the Assets prior to the Effective Time other than the Assumed Liabilities, including, but not limited to, any litigation existing on the date of Closing or subsequently filed against the Buyer challenging the transaction, and (2) litigation expenses for eminent domain actions filed against the Buyer subject to reimbursement of those expenses to the Seller by the condemning authority.

(d) any brokerage or finder's fees or commissions or similar payments based upon any agreement or understanding made, or alleged to have been made, by any Person with Seller (or any Person acting on its behalf) in connection with any of the Contemplated Transactions;

(e) any liability under the WARN Act or any similar state or local Legal Requirement that may result from an "Employment Loss", as defined by 29 U.S.C. sect. 2101(a)(6), caused by any action of Seller prior to the Closing or by Buyer's decision not to hire previous employees of Seller;

(f) any Employee Plan established or maintained by Seller; or

(g) any Retained Liabilities.

Notwithstanding anything contained in this Agreement to the contrary, the Buyer will not have the right to sue the Seller for Damages which result form a defect in the title to the Real Property obtained by the Buyer pursuant to this Agreement for which there is applicable title insurance pursuant to Section 5.9 hereof and on which a claim may be made by the Buyer for the relevant Damages unless (a) the Buyer has filed a claim under the relevant title insurance policy and the claim has not been allowed within 90 days of the date the claim was filed or (b) the Buyer has filed a claim under the relevant title insurance policy, the claim was allowed within 90 days after the filing of the claim but the processing or defending (or the taking of other relevant action in accordance with the claim by the Title Insurer) is not proceeding in a satisfactory manner as determined by the Buyer in the exercise of its reasonable judgment.

11.3 Indemnification and Reimbursement by Seller – Environmental and Real Estate Matter

In addition to the other indemnification provisions in this Article 11, Seller will indemnify and hold harmless Buyer and the other Buyer indemnified Persons, and will reimburse Buyer and the other Buyer Indemnified Persons, for any Damages (including costs of cleanup, containment or other remediation) arising from or in connection with:

(a) any Environmental, Health and Safety Liabilities arising out of or relating to: (i) the ownership or operation by any Person at any time on or prior to the Closing Date of any of the Facilities, assets or the business of Seller, or (ii) any Hazardous Materials or other contaminants that were present on the Facilities or Assets at any time on or prior to the Closing Date; or

(b) any bodily injury (including illness, disability and death, regardless of when any such bodily injury occurred, was incurred or manifested itself), personal injury, property damage (including trespass, nuisance, wrongful eviction and deprivation of the use of real property) or other damage of or to any Person or any Assets in any way arising from or allegedly arising from any Hazardous Activity conducted by any Person with respect to the business of Seller or the Assets prior to the Closing Date or from any Hazardous Material that was (i) present on or before the Closing Date on or at the Facilities (or present on any other property, if such Hazardous Material emanated or allegedly emanated from any Facility and was present on any Facility, on or prior to the Closing Date) or (ii) Released or allegedly Released by any Person on or at any Facilities or Assets at any time on or prior to the Closing Date.

(c) any assertion of, or the existence of, any right by any Person to obtain the ownership of, or right to negotiate to obtain the ownership of, any of the Assets other than any such right granted by or purported to have been granted by the Buyer, including without limitation rights of first refusal or rights to have Seller negotiate with

such Person prior to sale of any of the Assets to another Person (and including therein without limitation any of the foregoing which have been asserted by Volusia County and which may be asserted by Altamonte Springs).

Buyer, with Seller's consent and approval which shall not be unreasonably withheld, will be entitled to control any Remedial Action, any Proceeding relating to an Environmental Claim and, except as provided in the following sentence, any other Proceeding with respect to which indemnity may be sought under this Section 11.3. The procedure described in Section 11.9 will apply to any claim solely for monetary damages relating to a matter covered by this Section 11.3.

No claim for environmental indemnification or reimbursement may be asserted unless (i) the underlying environmental condition is specifically identified in Exhibit 3.13 or (ii) the party asserting the claim establishes that the conditions, Release, disposal or actions giving rise to the liability or claim were present at or prior to Closing and that the party asserting the claim did not materially cause or contribute to such conditions after Closing. For purposes of this section 11.3, all environmental conditions and compliance issues arising out of, related to, or caused by any facts or circumstances as described in the environmental reports listed in Exhibit 3.13 or obtained pursuant to Section 3.12 hereof are deemed to have been specifically identified in Exhibit 3.13.

11.4 Indemnification and Reimbursement by Buyer

Buyer will indemnify and hold harmless Seller, and will reimburse Seller, for any Damages arising from or in connection with:

(a) any Breach of any representation or warranty made by Buyer in this Agreement or in any certificate, document, writing or instrument delivered by Buyer pursuant to this Agreement;

(b) any Breach of any covenant or obligation of Buyer in this Agreement or in any other certificate, document, writing or instrument delivered by Buyer pursuant to this Agreement;

(c) any claim by any Person for brokerage or finder's fees or commissions or similar payments based upon any agreement or understanding alleged to have been made by such Person with Buyer (or any Person acting on Buyer's behalf) in connection with any of the Contemplated Transactions; or

(d) any Assumed Liabilities.

11.5 Limitations on Amount--Seller

Seller shall have no liability (for indemnification or otherwise) with respect to claims under Section 11.2(a) until the total of all Damages with respect to such matters exceeds $500,000 and then only for the amount by which such Damages exceed $500,000. However, this Section 11.5 will not apply to claims under (the following, each an "Exempted Breach") Section 11.2(b) through (g) or to matters arising in respect of Sections 3.7, 3.13, or 3.15, to any Breach of any of Seller's representations and warranties of which the Seller had knowledge at any time prior to the date on which such representation and warranty is made or any Breach by Seller of any covenant or obligation. Notwithstanding the foregoing, the Seller shall not be liable for Minor Claims (as hereinafter defined) until such Minor Claims aggregate more than $500,000 in which case, Seller shall be liable for all Minor Claims to the extent that in the aggregate they exceed $500,000 provided that Damages in aggregate exceed $500,000. "Minor Claim" means Damages resulting from a Breach hereof covered by Section 11.2(a) (other than an Exempted Breach) that do not exceed $20,000.00.

11.6 Limitations on Amount--Buyer

Buyer will have no liability (for indemnification or otherwise) with respect to claims under Section 11.4(a) until the total of all Damages with respect to such matters exceeds $500,000 and then only for the amount by which such Damages exceed $500,000. However, this Section 11.6 will not apply to claims under Section 11.4(b) through (d) or matters arising in respect of Section 4.4 or to any Breach of any of Buyer's representations and warranties of which Buyer had knowledge at any time prior to the date on which such representation and warranty is made or any Breach by Buyer of any covenant or obligation, and Buyer will be liable for all Damages with respect to such Breaches.

11.7 Time Limitations

(a) If the Closing occurs, Seller will have liability (for indemnification or otherwise) with respect to any Breach of (i) a covenant or obligation to be performed or complied with prior to the Closing Date (other than those in Sections 2.1 and 2.4(b) and Articles 10 and 12, as to which a claim may be made at any time), or (ii) a representation or warranty (other than one contained in Section 3.12 or 3.13 hereof) only if on or before three years after the Closing Date, Buyer notifies Seller of a claim specifying the factual basis of the claim in reasonable detail to the extent then known by Buyer. If the Closing occurs, Seller will have liability (for indemnification or otherwise) with respect to any Breach of the representations and warranties contained in Section 3.12 or 3.13 hereof only if on or before five years after the Closing Date, the Buyer notifies Seller of a claim specifying the factual basis of the claim in reasonable detail to the extent then known by Buyer.

(b) If the Closing occurs, Buyer will have liability (for indemnification or otherwise) with respect to any Breach of (i) a covenant or obligation to be performed or complied with prior to the Closing Date (other than those in Article 12, as to which a claim may be made at any time) or (ii) a representation or warranty (other than that set forth in Section 4.4, as to which a claim may be made at any time), only if on or before three years after the Closing Date, Seller notifies Buyer of a claim specifying the factual basis of the claim in reasonable detail to the extent then known by Seller.

11.8 Right Of Setoff

Upon notice to Seller specifying in reasonable detail the basis therefor, Buyer may set off any amount to which it may be entitled under this Article 11 against amounts otherwise payable to Seller, subject to Seller's right to object under the Dispute Resolution Process. The exercise of such right of setoff by Buyer in good faith, whether or not ultimately determined to be justified, will not constitute an event of default. Neither the exercise of nor the failure to exercise such right of setoff will constitute an election of remedies or limit Buyer in any manner in the enforcement of any other remedies that may be available to it.

11.9 Third-Party Claims

(a) Promptly after receipt by a Person entitled to indemnity under Section 11.2, 11.3 (to the extent provided in the last sentence of Section 11.3) or 11.4 (an "Indemnified Person") of notice of the assertion of a Third-Party Claim against it, such Indemnified Person shall give notice to the Person obligated to indemnify under such Section (an "Indemnifying Person") of the assertion of such Third-Party Claim, provided that the failure to notify the Indemnifying Person will not relieve the Indemnifying Person of any liability that it may have to any Indemnified Person, except to the extent that the Indemnifying Person demonstrates that the defense of such Third-Party Claim is prejudiced by the Indemnified Person's failure to give such notice.

(b) If an Indemnified Person gives notice to the Indemnifying Person pursuant to Section 11.9(a) of the assertion of a Third-Party Claim, the Indemnifying Person shall be entitled to participate in the defense of such Third-Party Claim and, to the extent that it wishes (unless (i) the Indemnifying Person is also a Person against whom the Third-Party Claim is made and the Indemnified Person determines in good faith that joint representation would be inappropriate or (ii) the Indemnifying Person fails to provide reasonable assurance to the Indemnified Person of its financial capacity to defend such Third-Party Claim and provide indemnification with respect to such Third-Party Claim), to assume the defense of such Third-Party Claim with counsel satisfactory to the Indemnified Person. After notice from the Indemnifying Person to the Indemnified Person of its election to assume the defense of such Third-Party Claim, the Indemnifying Person shall not, so long as it diligently conducts such defense, be liable to the

Indemnified Person under this Article 11 for any fees of other counsel or any other expenses with respect to the defense of such Third-Party Claim, in each case subsequently incurred by the Indemnified Person in connection with the defense of such Third-Party Claim, other than reasonable costs of investigation. If the Indemnifying Person assumes the defense of a Third-Party Claim, (i) such assumption will conclusively establish for purposes of this Agreement that the claims made in that Third-Party Claim are within the scope of and subject to indemnification, and (ii) no compromise or settlement of such Third-Party Claims may be effected by the Indemnifying Person without the Indemnified Person's Consent unless (A) there is no finding or admission of any violation of Legal Requirement or any violation of the rights of any Person; (B) the sole relief provided is monetary damages that are paid in full by the Indemnifying Person; and (C) the Indemnified Person shall have no liability with respect to any compromise or settlement of such Third-Party Claims effected without its Consent. If notice is given to an Indemnifying Person of the assertion of any Third-Party Claim and the Indemnifying Person does not, within ten (10) days after the Indemnified Person's notice is given, give notice to the Indemnified Person of its election to assume the defense of such Third-Party Claim, the Indemnifying Person will be bound by any determination made in such Third-Party Claim or any compromise or settlement effected by the Indemnified Person.

(c) Notwithstanding the foregoing, if an Indemnified Person determines in good faith that there is a reasonable probability that a Third-Party Claim may adversely affect it or its Related Persons other than as a result of monetary damages for which it would be entitled to indemnification under this Agreement, the Indemnified Person may, by notice to the Indemnifying Person, assume the exclusive right to defend, compromise or settle such Third-Party Claim, but the Indemnifying Person will not be bound by any determination of any Third-Party Claim so defended for the purposes of this Agreement or any compromise or settlement effected without its Consent (which may not be unreasonably withheld).

(d) Notwithstanding the provisions of Section 13.4, Seller hereby consents to the nonexclusive jurisdiction of any court in which a Proceeding in respect of a Third-Party Claim is brought against any Buyer Indemnified Person for purposes of any claim that a Buyer Indemnified Person may have under this Agreement with respect to such Proceeding or the matters alleged therein and agree that process may be served on Seller and Shareholders with respect to such a claim anywhere in the world.

(e) With respect to any Third-Party Claim subject to indemnification under this Article 11: (i) both the Indemnified Person and the Indemnifying Person, as the case may be, shall keep the other Person fully informed of the status of such Third-Party Claim and any related Proceedings at all stages thereof where such Person is not represented by its own counsel, and (ii) the parties agree (each at its own expense) to render to each other such assistance as they may reasonably require of each other and to

cooperate in good faith with each other in order to ensure the proper and adequate defense of any Third-Party Claim.

(f) With respect to any Third-Party Claim subject to indemnification under this Article 11, the parties agree to cooperate in such a manner as to preserve in full (to the extent possible) the confidentiality of all Confidential Information and the attorney-client and work-product privileges. In connection therewith, each party agrees that: (i) it will use its Best Efforts, in respect of any Third-Party Claim in which it has assumed or participated in the defense, to avoid production of Confidential Information (consistent with applicable law and rules of procedure), and (ii) all communications between any party hereto and counsel responsible for or participating in the defense of any Third-Party Claim shall, to the extent possible, be made so as to preserve any applicable attorney-client or work-product privilege.

11.10 Other Claims

A claim for indemnification for any matter not involving a Third-Party Claim may be asserted by notice to the party from whom indemnification is sought and shall be paid promptly after such notice, subject to filing an objection under the Dispute Resolution Process.

11.11 Buyer Benefit

Upon any termination of this Agreement that would entitle the Buyer to recover the benefit of its bargain with the Seller, the Buyer and Seller agree that the value of the benefit of the bargain is speculative, is not readily subject to determination objectively and agree that the value of the benefit of the bargain to the Buyer is $5 Million, plus an amount equal to all transaction costs which the Buyer would have paid if the Closing and issuance of the Acquisition Bonds had taken place.

12. Confidentiality

12.1 Definition of Confidential Information

(a) As used in this Article 12, the term "Confidential Information" includes any and all of the following information of Seller or Buyer that has been or may hereafter be disclosed in any form, whether in writing, orally, electronically or otherwise, or otherwise made available by observation, inspection or otherwise by either party (Buyer on the one hand or Seller, on the other hand) or its Representatives (collectively, a "Disclosing Party") to the other party or its Representatives (collectively, a "Receiving Party"):

(i) all information that is a trade secret under applicable trade secret or other law;

(ii) all information concerning product specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, past, current and planned research and development, current and planned manufacturing or distribution methods and processes, customer lists, current and anticipated customer requirements, price lists, market studies, business plans, computer hardware, Software and computer software and database technologies, systems, structures and architectures;

(iii) all information concerning the business and affairs of the Disclosing Party (which includes historical and current financial statements, financial projections and budgets, tax returns and accountants' materials, historical, current and projected sales, capital spending budgets and plans, business plans, strategic plans, marketing and advertising plans, publications, client and customer lists and files, contracts, the names and backgrounds of key personnel and personnel training techniques and materials, however documented), and all information obtained from review of the Disclosing Party's documents or property or discussions with the Disclosing Party regardless of the form of the communication; and

(iv) all notes, analyses, compilations, studies, summaries and other material prepared by the Receiving Party to the extent containing or based, in whole or in part, upon any information included in the foregoing.

(b) Any trade secrets of a Disclosing Party shall also be entitled to all of the protections and benefits under applicable trade secret law and any other applicable law. If any information that a Disclosing Party deems to be a trade secret is found by a court of competent jurisdiction not to be a trade secret for purposes of this Article 12, such information shall still be considered Confidential Information of that Disclosing Party for purposes of this Article 12 to the extent included within the definition. In the case of trade secrets, each of Buyer and Seller hereby waives any requirement that the other party submit proof of the economic value of any trade secret or post a bond or other security.

12.2 Restricted Use of Confidential Information

(a) Each Receiving Party acknowledges the confidential and proprietary nature of the Confidential Information of the Disclosing Party and agrees that such Confidential Information (i) shall be kept confidential by the Receiving Party; (ii) shall not be used for any reason or purpose other than to evaluate and consummate the Contemplated Transactions; and (iii) without limiting the foregoing, shall not be disclosed by the Receiving Party to any Person, except in each case as otherwise expressly permitted by the terms of this Agreement or with the prior written consent of an authorized representative of Seller with respect to Confidential Information of Seller (each, a "Seller Contact") or an authorized representative of Buyer with respect to Confidential Information of Buyer (each, a "Buyer Contact"). Each of Buyer and Seller

shall disclose the Confidential Information of the other party only to its Representatives who require such material for the purpose of evaluating the Contemplated Transactions and are informed by Buyer or Seller as the case may be, of the obligations of this Article 12 with respect to such information. Each of Buyer and Seller shall (iv) enforce the terms of this Article 12 as to its respective Representatives; (v) take such action to the extent necessary to cause its Representatives to comply with the terms and conditions of this Article 12; and (vi) be responsible and liable for any breach of the provisions of this Article 12 by it or its Representatives.

(b) Unless and until this Agreement is terminated, Seller shall maintain as confidential any Confidential Information (including for this purpose any information of Seller of the type referred to in Sections 12.1(a)(i), (ii) and (iii), whether or not disclosed to Buyer) of the Seller relating to any of the Assets or the Assumed Liabilities. Notwithstanding the preceding sentence, Seller may use any Confidential Information of Seller before the Closing in the Ordinary Course of Business in connection with the transactions permitted by Section 5.2.

(c) From and after the Closing, the provisions of Section 12.2(a) above shall not apply to or restrict in any manner Buyer's use of any Confidential Information of the Seller relating to any of the Assets or the Assumed Liabilities.

12.3 Exceptions

Sections 12.2(a) and (b) do not apply to that part of the Confidential Information of a Disclosing Party that a Receiving Party demonstrates (a) was, is or becomes generally available to the public other than as a result of a breach of this Article 12 or the Confidentiality Agreement by the Receiving Party or its Representatives; (b) was or is developed by the Receiving Party independently of and without reference to any Confidential Information of the Disclosing Party; or (c) was, is or becomes available to the Receiving Party on a nonconfidential basis from a Third Party not bound by a confidentiality agreement or any legal, fiduciary or other obligation restricting disclosure. Seller shall not disclose any Confidential Information of Seller relating to any of the Assets or the Assumed Liabilities in reliance on the exceptions in clauses (b) or (c) above.

12.4 Legal Proceedings

If a Receiving Party becomes compelled in any Proceeding or is requested by a Governmental Body having regulatory jurisdiction over the Contemplated Transactions to make any disclosure that is prohibited or otherwise constrained by this Article 12, that Receiving Party shall provide the Disclosing Party with prompt notice of such compulsion or request so that it may seek an appropriate protective order or other appropriate remedy or waive compliance with the provisions of this Article 12. In the absence of a protective order or other remedy, the Receiving Party may disclose that

portion (and only that portion) of the Confidential Information of the Disclosing Party that, based upon advice of the Receiving Party's counsel, the Receiving Party is legally compelled to disclose or that has been requested by such Governmental Body, provided, however, that the Receiving Party shall use reasonable efforts to obtain reliable assurance that confidential treatment will be accorded by any Person to whom any Confidential Information is so disclosed. The provisions of this Section 12.4 do not apply to any Proceedings between the parties to this Agreement.

12.5 Return or Destruction of Confidential Information

If this Agreement is terminated, each Receiving Party shall (a) destroy all Confidential Information of the Disclosing Party prepared or generated by the Receiving Party without retaining a copy of any such material; (b) promptly deliver to the Disclosing Party all other Confidential Information of the Disclosing Party, together with all copies thereof, in the possession, custody or control of the Receiving Party or, alternatively, with the written consent of a Seller Contact or a Buyer Contact (whichever represents the Disclosing Party) destroy all such Confidential Information; and (c) certify all such destruction in writing to the Disclosing Party, provided, however, that the Receiving Party may retain a list that contains general descriptions of the information it has returned or destroyed to facilitate the resolution of any controversies after the Disclosing Party's Confidential Information is returned.

12.6 Attorney-Client Privilege

The Disclosing Party is not waiving, and will not be deemed to have waived or diminished, any of its attorney work product protections, attorney-client privileges or similar protections and privileges as a result of disclosing its Confidential Information (including Confidential Information related to pending or threatened litigation) to the Receiving Party, regardless of whether the Disclosing Party has asserted, or is or may be entitled to assert, such privileges and protections. The parties (a) share a common legal and commercial interest in all of the Disclosing Party's Confidential Information that is subject to such privileges and protections; (b) are or may become joint defendants in Proceedings to which the Disclosing Party's Confidential Information covered by such protections and privileges relates; (c) intend that such privileges and protections remain intact should either party become subject to any actual or threatened Proceeding to which the Disclosing Party's Confidential Information covered by such protections and privileges relates; and (d) intend that after the Closing the Receiving Party shall have the right to assert such protections and privileges. No Receiving Party shall admit, claim or contend, in Proceedings involving either party or otherwise, that any Disclosing Party waived any of its attorney work-product protections, attorney-client privileges or similar protections and privileges with respect to any information, documents or other material not disclosed to a Receiving Party due to the Disclosing Party disclosing its Confidential Information (including Confidential Information related to pending or threatened litigation) to the Receiving Party.

13. General Provisions

13.1 Expenses

Except as otherwise provided in this Agreement, each party to this Agreement will bear its respective fees and expenses incurred in connection with the preparation, negotiation, execution and performance of this Agreement and the Contemplated Transactions, including all fees and expense of its Representatives. Seller will pay all amounts payable to the Title Insurer in respect of the Title Commitments, copies of exceptions and the Title Policy, including premiums (including premiums for endorsements) and search fees. If this Agreement is terminated, the obligation of each party to pay its own fees and expenses will be subject to any rights of such party arising from a Breach of this Agreement by another party.

13.2 Public Announcements

Any public announcement, press release or similar publicity with respect to this Agreement or the Contemplated Transactions will be issued, if at all, at such time and in such manner as Seller determines. Except with the prior consent of Seller or as permitted by this Agreement, Buyer nor any of its Representatives shall disclose to any Person (a) the fact that any Confidential Information of Seller has been disclosed to Buyer or its Representatives, that Buyer or its Representatives have inspected any portion of the Confidential Information of Seller, that any Confidential Information of Buyer has been disclosed to Seller or their Representatives or that Seller or its Representatives have inspected any portion of the Confidential Information of Buyer or (b) any information about the Contemplated Transactions, including the status of such discussions or negotiations, the execution of any documents (including this Agreement) or any of the terms of the Contemplated Transactions or the related documents (including this Agreement). Seller and Buyer will consult with each other concerning the means by which Seller's employees, customers, suppliers and others having dealings with Seller will be informed of the Contemplated Transactions, and Buyer will have the right to be present for any such communication.

13.3 Notices

All notices, Consents, waivers and other communications required or permitted by this Agreement shall be in writing and shall be deemed given to a party when (a) delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid); (b) sent by facsimile or e-mail with confirmation of transmission by the transmitting equipment; or (c) received or rejected by the addressee, if sent by certified mail, return receipt requested, in each case to the following addresses, facsimile numbers or e-mail addresses and marked to the attention of the person (by name or title) designated below (or to such other address, facsimile number, e-mail address or person as a party may designate by notice to the other parties):

Seller (before the Closing):	1000 Color Place Apopka, FL 32703 Attention: Donnie Crandall, CEO Fax: (407) 598-4219
with a mandatory copy to:	Florida Water Services Corporation 1000 Color Place Apopka, FL 32703 Attention: Carlyn Kowalsky, General Counsel Fax: (407) 598-4241 E-mail: carlynk@florida-water.com Greenberg Traurig, P.A. 777 South Flagler Drive, Suite 300 East West Palm Beach, Florida 33401 Attention: Phillip C. Gildan Fax: (561) 838-8867 E-mail: gildanp@gtlaw.com
Seller (after the Closing):	Philip R. Halverson VP/General Counsel 30 West Superior Street Duluth, MN 55802 Fax: (218) 723-3960 E-mail: phalverson@allete.com
Buyer:	J. Lance Reese, Chairman Florida Water Services Authority E-mail: cacagms@aol.com
with a mandatory copy to:	Miller, Canfield, Paddock and Stone, PLC Attention: Richard I. Lott Fax: (850) 469-1088 E-mail: rilott@prodigy.net

13.4 Agreements as to Attorneys. After full disclosure of potential conflicts of interest, Seller and Buyer agree that, in the event Buyer employs after the Closing as its attorney (whether as inside or outside counsel) or a law firm to act as its attorney or attorneys and any of the foregoing was employed by Seller prior to the Closing ("Common Attorneys"), Seller and Buyer do hereby waive any conflict of interest that might exist as a result of the foregoing and does also waive any requirement that such Common Attorneys maintain in confidence information which, but for this section, such

Common Attorneys would have to maintain in confidence as a result of their employment as attorneys by the Seller, provided, however, the foregoing waiver is only as to Buyer and it does not apply to information which such Common Attorneys may have relating to this Agreement and the documents to be executed and delivered at the Closing (including the negotiating thereof) and the consummation of the Contemplated Transactions. Furthermore, the foregoing waiver of conflict of interest does not apply to the Common Attorney representing the Buyer in connection with a dispute under this Agreement or a document to be executed and delivered at the Closing. Common Attorneys will include without limitation, if employed as attorneys for Buyer after Closing, Carlyn Kowalsky, Lewis, Longman, & Walker, P.A Mason and McGee, P.A., Brigham Moore, P.A., Farr, Farr & Emerich, P.A., Lowndes, Drosdick, Doster, Kantor & Reed, P.A., Rutledge, Ecenia, Purnell & Hoffman, P.A., and Greenberg Traurig. For purposes of this section, a person acting as an attorney within a law firm that constitutes a Common Attorney is considered to be a Common Attorney in his individual capacity. The Seller agrees that the Buyer may employ the same lobbying services currently being utilized by the Seller. Seller shall pay to Buyer at Closing the sum of $200,000 which Buyer shall utilize for lobbying expenses.

13.5 Jurisdiction; Service of Process

Any Proceeding arising out of or relating to this Agreement or any Contemplated Transaction may be brought in the courts of the State of Florida, County of Santa Rosa, or, if it has or can acquire jurisdiction, in the United States District Court for the Northern District of Florida, and each of the parties irrevocably submits to the exclusive jurisdiction of each such court in any such Proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the Proceeding shall be heard and determined only in any such court and agrees not to bring any Proceeding arising out of or relating to this Agreement or any Contemplated Transaction in any other court. The parties agree that either or both of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and bargained agreement between the parties irrevocably to waive any objections to venue or to convenience of forum. Process in any Proceeding referred to in the first sentence of this section may be served on any party anywhere in the world.

13.6 Enforcement of Agreement

(a) Notwithstanding any other provision in this Agreement, any dispute among the parties which arises from the Agreement shall be resolved by binding arbitration conducted in accordance with this Section 13.5. (the "Dispute Resolution Process") Either party may initiate the Dispute Resolution Process by providing written notice to the other party.

(b) After transmittal and receipt of a written notice specifying the area or areas of disagreement or dispute, the parties agree to meet at reasonable times and places, as mutually agreed upon, to discuss the issues.

(c) If discussions between the parties fail to resolve the dispute within fifteen (15) business days of the receipt by each party of the notice described in subsection (a) of this Section 13.5, a binding arbitration may then be initiated by either party by written notification to the other party of the existence of a dispute. Any and all issues related to the matter addressed by the written notice provided in subsection (a) of Section 13.5 or any response by the other party shall be raised and resolved in a single proceeding.

(d) The arbitrators shall be appointed and act as follows: (1) Each party shall appoint a person as arbitrator within ten (10) business days of the date one of the parties has notified the other of the existence of a dispute; (2) Each appointment shall be signified in writing to the counter party and the arbitrators so appointed, within ten (10) days of their acceptance of appointment, shall appoint a third arbitrator, who shall chair the panel. If the arbitrators appointed by the parties are unable to agree upon a third arbitrator, the same shall be appointed by the American Arbitration Association from its qualified panel of arbitrators. Each party shall have the right to veto up to two appointments proposed by the American Arbitration Association. If either party fails to appoint an arbitrator within ten (10) business days from the date one of the parties has notified the other of the existence of a dispute, then an arbitrator shall be appointed by the American Arbitration Association from its qualified panel of arbitrators as the appointment of the party failing to timely appoint and the two so appointed shall appoint a third arbitrator to chair the panel. The party on whose behalf an arbitrator is appointed shall have the right to veto up to two of the arbitrators appointed by the American Arbitration Association; (3) Nothing in this Section 13.6 shall preclude the parties from mutually agreeing to a single arbitrator to resolve the dispute; (4) No arbitrator shall have a business or other pecuniary relationship with either party, except for payment of arbitrator's fees and expenses without the written consent of both parties.

(e) Arbitrators shall be sworn to perform their duties with impartiality and fidelity. In rendering any decision, the arbitrator shall proceed to consider the Agreement, the dispute identified in the notice and any response and the actions taken and the documentation thereof, conduct, and relative position, knowledge, and the ability of the parties in relation to the dispute.

(f) The arbitration hearing shall convene not earlier than sixty (60) days and not later than ninety (90) days of the acceptance of appointment of all of the arbitrators chosen by the parties unless the parties mutually agree to an earlier date. The arbitrators shall render a decision within ten (10) business days of the date on which the arbitration hearing concludes, and such decisions shall be in writing and in duplicate, one counterpart thereof to be delivered simultaneously to each of the parties. The decision

shall contain findings of fact and conclusions of law and shall be final and binding upon the parties.

(g) The parties shall be entitled to discovery pursuant to the Florida Rules of Civil Procedure. All discovery requests by a party shall be enforced by the arbitrators. The arbitration hearing shall not proceed until all outstanding discovery requests have been fulfilled.

(h) The fees, charges and expenses of the arbitrators, any experts engaged by the arbitrators, the respective counsel engaged by the parties, and any witnesses called by the parties shall be paid as follows: the arbitrators shall order each party to pay their own fees, charges and expenses and assess the fees, charges and expenses of the arbitrators equally between the parties.

(i) The provisions of the Florida Arbitration Code, Chapter 682, Florida Statutes, and the Florida Evidence Code, Chapter 90, Florida Statutes, except to the extent inconsistent with the provisions of this Agreement, shall specifically be deemed to apply to any arbitration proceeding conducted hereunder. Unless the venue is mutually agreed upon otherwise by the parties, the venue for any arbitration commenced pursuant to this Section shall be in Pensacola, Florida.

13.7 Waiver; Remedies Cumulative

The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither any failure nor any delay by any party in exercising any right, power or privilege under this Agreement or any of the documents referred to in this Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law, (a) no claim or right arising out of this Agreement or any of the documents referred to in this Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other party; (b) no waiver that may be given by a party will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on one party will be deemed to be a waiver of any obligation of that party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the documents referred to in this Agreement.

13.8 Entire Agreement and Modification

This Agreement supersedes all prior agreements, whether written or oral, between the parties with respect to its subject matter (including any letter of intent and any confidentiality agreement between Buyer and Seller) and constitutes (along with the Disclosure Letter, Exhibits and other documents delivered pursuant to this Agreement) a

complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. This Agreement may not be amended, supplemented, or otherwise modified except by a written agreement executed by the party to be charged with the amendment.

13.9 Assignments, Successors and no Third-Party Rights

No party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other parties, except that Buyer may collaterally assign its rights hereunder to any financial institution providing financing in connection with the Contemplated Transactions. Subject to the preceding sentence, this Agreement will apply to, be binding in all respects upon and inure to the benefit of the successors and permitted assigns of the parties. Nothing expressed or referred to in this Agreement will be construed to give any Person other than the parties to this Agreement any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement, except such rights as shall inure to a successor or permitted assignee pursuant to this Section 13.8.

13.10 Severability

If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

13.11 Construction

The headings of Articles and Sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All references to "Articles," and "Sections" refer to the corresponding Articles and Sections of this Agreement.

13.12 Time of Essence

With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

13.13 Governing Law

This Agreement will be governed by and construed under the laws of the State of Florida without regard to conflicts-of-laws principles that would require the application of any other law.

13.14 Execution of Agreement

This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile shall be deemed to be their original signatures for all purposes.

13.15 Radon Gas.

(a) **RADON IS NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL AND STATE GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN FLORIDA. ADDITIONAL INFORMATION REGARDING RADON TESTING MAY BE OBTAINED FROM THE COUNTY PUBLIC HEALTH UNIT.**

13.16 Limited Liability.

Neither the State of Florida nor any political subdivision or municipality thereof, nor the Buyer, shall be obligated (1) to exercise its ad valorem taxing power or any other taxing power in any form on any real or personal property to pay any liability arising out of, or in any connection whatsoever with, this Agreement, or to pay the principal of the Acquisition Bonds, the interest thereon or other costs incident thereto or (2) to pay the same from any other funds, except from the Net Revenues realized by the Buyer from its ownership or operation of the System or from the Acquisition Bonds Net Proceeds, junior and subordinate to the payment of any Bonds or other indebtedness payable from such source. It is further agreed between the Buyer and the Seller that this Agreement and any obligations arising in connection therewith, whether for payment of the Purchase Price, or for any claim of liability, remedy for breach, or otherwise, shall not constitute a lien on the System or any other property of the Authority, or any municipality.

Notwithstanding anything to the contrary contained herein or in any other instrument or document executed by or on behalf of the Buyer in connection herewith, no stipulation, covenant, agreement or obligation contained herein or therein shall be deemed or construed to be a stipulation, covenant, agreement, or obligation of any present or future member, officer, employee or agent of the Buyer, or of any incorporator, member, director, trustee, officer, employee or agent of any successor to the Buyer, in any such person's individual capacity, and no such person, in his individual capacity, shall be liable personally for any breach or non-observance of or for any failure to perform, fulfill or comply with any such stipulations, covenants, agreements or

obligations, nor shall any recourse be had for the payment of the principal of, premium, if any, or interest on any of the Bonds or the Purchase Price or for any claim based hereon or thereon or on any such stipulation, covenant, agreement, or obligation, against any such person, in his individual capacity, either directly or through the Buyer or any successor to the Buyer, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such person, in his individual capacity, is hereby expressly waived and released. All references to the Buyer in this paragraph shall be deemed to include the Buyer, the City of Gulf Breeze, the City of Milton, their respective Mayors, Council Members, officers, employees, and agents.

The Buyer shall not be obligated to pay any liability, claim or obligation arising from or in connection with this Agreement or the transactions contemplated thereby, or the Purchase Price from any funds of the Buyer derived from any source other than the Pledged Revenues, (as it shall be defined in the Indenture pursuant to which the Bonds are issued) which right of payment from the Buyer to the Seller shall be junior and subordinate to the payment of the Bonds secured by such Pledged Revenues. The Seller hereby agrees to indemnify and defend the Buyer and hold the Buyer harmless against any and all claims, losses liabilities or damages in any way growing out of or resulting from challenges to this Agreement or objections to the Buyer completing the Contemplated Transactions prior to closing, including, without limitation, all costs and expenses of the Buyer, including reasonable attorney's fees, incurred in the performance of any activities of the Buyer in connection with the foregoing. All references to the Buyer in this paragraph shall be deemed to include the Buyer, the City of Gulf Breeze, the City of Milton, their respective Mayors, Council Members, officers, employees, and agents.

Nothing herein shall be deemed to authorize, create or impose upon the City of Gulf Breeze or the City of Milton any obligation, duty, liability or responsibility for the taking of or refraining from any action, or for the payment of any sums for any reason whatsoever. The Seller hereby acknowledges that the City of Gulf Breeze and the City of Milton shall have no liability whatsoever on account of this Agreement or the transactions contemplated hereby, including, without limitation, any claims or liabilities arising on account of any breach, misrepresentation or other action or failure to act on the part of the Buyer. The Seller hereby covenants and agrees that it will never seek remedy or recourse against, or seek to impose any liability upon, the City of Gulf Breeze or City of Milton, for any liability or claim arising in connection with or relating to this Agreement or the transactions contemplated thereby, whether against the Buyer, the Cities of Gulf Breeze or Milton directly, or otherwise, under any rule of law or equity, statute or constitution or by the enforcement of any provision of this Agreement, or by way of assessment or penalty or otherwise; and all such liability, if any, of the City of Milton and the City of Gulf Breeze is hereby expressly waived and released.

If, prior to closing, the Seller shall determine that, because of its indemnity obligations contained in the penultimate paragraph hereto, it is no longer economically feasible to proceed to the Closing or to pursue the transaction contemplated hereby, Seller may elect to give written notice to the Buyer that it no longer wishes to complete the Contemplated Transaction. Upon receipt of such notice, Buyer may elect to proceed with the Closing without such indemnity under the penultimate paragraph (in which case the Seller shall be excused from any further indemnity obligation under said indemnity but not from obligations accrued therefrom prior thereto), or to terminate its obligations hereunder (in which case the Seller shall remain liable for and pay the Due Diligence Expense).

The provisions of this Section shall survive the termination of this Agreement.

13.17 Obligations Subordinate.

All obligations of the Buyer hereunder or arising in connection therewith (the "Utility Acquisition Liabilities" or "UA Liabilities") shall be limited and special obligations of the Buyer, payable solely from the Net Revenues, junior and subordinate to the outstanding Bonds of the Authority. The UA Liabilities shall not be or constitute a general indebtedness, liability, general or moral obligation, or a pledge of the faith, credit or taxing power of the Buyer, the State of Florida, or any political subdivision or municipal corporation thereof, within the meaning of any constitutional or statutory provision or limitation. Neither the State of Florida nor any political subdivision or municipal corporation thereof, nor the Buyer shall be obligated (1) to levy ad valorem taxes on any property to pay the UA Liabilities or other costs incident thereto or (2) to pay the same from any other funds of the Buyer, except from the Net Revenues, junior and subordinate to the outstanding Bonds of the Buyer. It is further agreed between the Buyer and the Seller that the UA Liabilities shall not constitute a lien upon the System or facilities, or any part thereof, or on any other property of the Buyer.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

Buyer: _____

By: _____

Its: _____

Seller: _____

By: _____

Its: _____

From: "Richard Lott" <
To: "Matt Dannheisser (E-mail)" <
Cc: "ED, III GRAY (E-mail)" <
Date: Thu, 5 Sep 2002 03:09:31 -0500
Subject: notice of public hearing for fws

Matt,
We need to have the public hearing by Gulf Breeze within a few days of the Sept 13 approval. I suggest we advertise once 7 days prior, and once as soon as the FWSA is constituted. The optimal time to have the public hearing would be on the 16th of September.

I am in Jacksonville for my checkup at Mayo Clinic. Can you run the ad? I hope we do not have to mention specificially that we are acquiring the "Florida Water Service Company" assets in the ad.

LAW OFFICES OF
MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.
A PROFESSIONAL LIMITED LIABILITY COMPANY
25 WEST CEDAR STREET, SUITE 500
PENSACOLA, FLORIDA 32501

850/469-1088
TELECOPY 850/432-0677

EXHIBIT "C"

CIRCUIT COURT
NINTH JUDICIAL CIRCUIT
IN AND FOR OSCEOLA COUNTY, FLORIDA

OSCEOLA COUNTY, a political subdivision of the State of Florida,

Plaintiff,

CASE NO: C102-0C-2810

v.

CITY OF GULF BREEZE, Florida, CITY OF MILTON, Florida, municipal corporations of the State of Florida, and FLORIDA WATER SERVICES AUTHORITY, a special-purpose governmental entity,

Defendants.
_____/

PLAINTIFF'S REPLY TO DEFENDANTS' ALTERNATIVE MOTION TO DISMISS OR TRANSFER DUE TO IMPROPER VENUE

COMES NOW PLAINTIFF OSCEOLA COUNTY who herewith replies to the venue-related motion interposed by Defendants, the Cities of Gulf Breeze and Milton and the Florida Water Services Authority (FWSA), in the declaratory judgment action that Plaintiff filed against them on 13 December 2002.

I. FACTS

1. Osceola County is a constitutional charter county comprising over 172,000 residents living within an area spanning over 1500 square miles.

2. Within Osceola County's bounds are seven water systems and one wastewater treatment system belonging to the Florida Water Services Corporation (Florida Water). Florida Water's parent company is a Minnesota-based concern called Allete, Inc.

3. These water and wastewater systems serve over 19,000 customers living within Osceola County.

4. Prominent among Florida Water's roster of customers within Osceola County is the County itself. Osceola County has paid connection fees to Florida Water and receives water and wastewater services from it.

5. Osceola County's Board of County Commissioners believes that local ownership and control of water and wastewater treatment systems located within the County serves the public purposes for which county government was initially chartered. To that end, Osceola County has been actively engaged for over a year in efforts to acquire the Florida Water systems located within the County.

6. The Florida Constitution provides Osceola County home rule authority to take such actions as are necessary to protect the best interests of the County and its residents.

7. The Florida Statutes also evince a legislative determination that local

governmental control of water and other utility systems serves the public purposes for which such governments have been ordained. The following considerations evidence this legislative determination: (a) the Local Government Comprehensive Planning and Land Development Regulatory Act, Part II, Fla. Stat. ch. 163, requires each county and municipality to adopt a financially feasible local government comprehensive plan and implementing land development regulations; (b) Fla. Stat. ch. 163.3177(3) requires each comprehensive plan to contain a mandatory capital improvement element for all public facilities including sanitary sewer and potable water facilities. *See* Fla. Stat. ch. 163.3164(24) (definition of "public facilities"); (c) Fla. Stat. ch. 163.3180 establishes this concurrency mandate for the availability of public facilities as a key enforcement and monitoring mechanism within the local comprehensive planning process; and (d) Fla. Stat. ch. 164.1051 dealing with intergovernmental disputes recognizes the importance of the matters at issue by expressly including service provision areas (ch. 164.1051(3)) and allocations of resources, including water, land, or other natural resources (§ 164.1051(4)) within the matters to which such law shall apply.

8. On 17 September 2002, the Cities of Gulf Breeze and Milton entered an interlocal agreement under Fla. Stat. ch. 163. The interlocal agreement created the FWSA.

9. Two days later, the FWSA announced that it and Florida Water had entered an acquisition agreement for the FWSA to buy and operate all Florida Water systems in the State of Florida. Florida Water's holdings in this state encompasses 152 water and wastewater systems serving over 500,000 people in 26 counties. This system includes the eight systems serving Osceola County.

10. Defendants' representatives, in their conduct of the meetings which culminated in the formation of the FWSA and entering the acquisition agreement under attack here, violated the rights enjoyed by Osceola County and its citizens under Florida's Government in the Sunshine Law.

11. Florida Water has neither utility systems nor customers within the municipal boundaries of either Gulf Breeze or Milton.

12. The scheduled closing of the deal between the FWSA and Florida Water is imminent: it is to occur no later than 14 February 2003.

13. Under Defendants' interlocal agreement, the municipalities and counties whose systems are to be acquired have no representation on the FWSA Board of Directors, nor any entitlement thereto. Moreover, it appears that Fla. Stat. ch. 163 immunizes from regulation by the Florida Public Service Commission (FPSC) those utility systems owned pursuant to interlocal agreement. Rather, the only governmental bodies having any influence over the FWSA are the City Councils of

Gulf Breeze and Milton - especially Gulf Breeze. The Gulf Breeze City Council has absolute discretion regarding appointments to, and removals from, the FWSA Board of Directors.

14. Consummation of Defendants' imminent deal will strip Osceola County of participation in matters of critical importance to the health, safety, and welfare of the residents of Osceola County in contravention of the County's constitutional home rule and statutory authority and vest absolute control over such matters in a governmental entity located over 500 miles away which is not answerable to Osceola County or its residents.

15. Such a result will infringe the home rule rights that the Florida Constitution and Fla. Stat. chs. 125, 163, and 164 repose in Osceola County and its citizens.

16. Finally, if closing of the proposed acquisition occurs within the next month, the due process rights that Fla. Const. art. I, § 24 and Fla. Stat. ch. 286 confer upon the County and its residents will also have been abrogated.

17. For these reasons, Osceola County has sought redress before this Court.

II. ANALYSIS

18. The sword-wielder exception to the home venue privilege confers

jurisdiction upon this Court. Ordinarily, governmental entities in Florida are entitled to be sued in the county of their residence. *Carlile v. Game & Fresh Water Fish Comm'n*, 354 So.2d 362, 363 (Fla. 1978). This home venue privilege is not absolute, however. *Board of County Commissioners of Madison County v. Grice*, 438 So.2d 392, 395 (Fla. 1983).

19. The sword-wielder exception to the home venue privilege applies where direct judicial protection is sought from an unlawful invasion of a constitutional right of the plaintiff, directly threatened in the county where the suit is initiated. *State Dep't of Highway Safety & Motor Vehicles v. Sarnoff*, 734 So. 2d 1054, 1056 (Fla. 1st DCA 1998). The standard to be applied is whether the state is the original sword-wielder, and the plaintiff's suit a shield against the state's thrust. If so, a suit may be maintained in the county where the blow has been or is about to be struck. *Nyberg v. Snover*, 604 So.2d 894, 895 (Fla. 1st DCA 1992). Governmental entities may avail themselves of the sword-wielder doctrine. *Jacksonville Electric Authority v. Clay County Utility Authority*, 802 So.2d 1190 (Fla. 1st DCA 2002)(court recognized that organization created under interlocal agreement could lay venue under sword-wielder doctrine but found it inapplicable on the facts due to the technical nature of the constitutional violation alleged by Clay County Utility Authority (CCUA)).

20. Osceola County's rights of due process and home rule are fundamental ones secured to the County under Fla. Const. art. VIII, § 1(g). There are no powers more elemental to a Florida county than due process - the entitlement to reasonable notice and an opportunity to be heard, and home rule - a county's fundamental right to exercise all the powers necessary and proper to provide governance and redress for its residents. Defendants Gulf Breeze, Milton, and the FWSA are governmental entities[1] whose pending commercial transaction imperils both of these fundamental rights as they relate to Osceola County's ability to have any say in the management of water resources within the County's boundaries.

21. The Florida Constitution provides Osceola County home rule authority to take such actions as are necessary to protect the best interests of the County and its residents. The action threatened by Defendants would constitute a fundamental deprivation of the County's constitutional home rule powers. These powers, as more specifically detailed in the Florida Statutes, including Chapters 125, 163, and 164, are immeasurably graver and weightier concerns than the technical infringement that concerned the CCUA in *Jacksonville Electric Authority, supra*, 802 So.2d at 1190. The CCUA has no constitutional home rule authority and is not charged with the

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[1] ***See defendants' Motion to Dismiss Due to Improper Venue or in the Alternative Transferred [sic] to Santa Rosa County, ¶7***

pervasive responsibility which the County bears to protect the health, safety, morals, and general well-being of both its environs and its residents.

22. Defendants' closure of their acquisition agreement with Florida Water is hotly pursued and imminent. Evidence of the tenacity of its pursuit lies in the consideration that, since 19 September 2002 when the acquisition agreement was announced, Defendant FWSA has held public meetings, adopted resolutions regarding its governance and rate structure, and participated in the zealous defense of all actions brought against it. Despite the myriad actions outstanding against the FWSA, Gulf Breeze, and Milton, an amended acquisition agreement was executed on 20 December 2002, according to a document that Allete, Inc. filed with the Securities and Exchange Commission. This amended agreement indicates that the FWSA and Florida Water intend to close the transaction no later than 14 February 2003.

23. Osceola County disputes Defendants' assertion that transfer of this action for adjudication in Santa Rosa County will promote judicial economy. While Santa Rosa County courts may be currently adjudicating another lawsuit presenting similar issues, nothing suggests that this Court lacks the experience, resources, or wherewithal to give all of the parties a fair hearing and properly resolve the significant constitutional implications of the proposed FWSA acquisition.

24. Regarding the ultimate disposition of this motion, Osceola County

excepts to affording Defendants relief in the form of dismissing this action. Under Florida law, transfer to a proper venue - not dismissal - is the preferred remedy for a successful venue challenge. *Martin v. Putnam County Blood Bank*, 687 So. 2d 967, 968 (Fla. 1st DCA 1997); *Gross v. Franklin*, 387 So.2d 1046, 1049 (Fla. 3rd DCA 1980).

25. In sum, Defendants' home venue privilege is not absolute. The imminent threat which Defendants' purely commercial venture poses to Osceola County's fundamental constitutional rights of due process and home rule compels the conclusion that the sword-wielder doctrine justifies this Court's retention of jurisdiction over this action.

WHEREFORE, Osceola County respectfully requests that this Court deny Defendants' alternative motion to dismiss this action or transfer it to the First Judicial Circuit in and for Santa Rosa County, Florida.

Respectfully submitted this 16th day of January, 2003.

JO O. THACKER
COUNTY ATTORNEY

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CERTIFICATE OF SERVICE

I, Derek Phillips, certify that on 16 January 2003 a copy of the foregoing has been furnished by first class U.S. mail to:

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James Bruce Culpepper, Esq.
Charles F. Ketchey Jr., Esq.
C/O Akerman Senterfitt
301 South Bronough Street, Suite 200
Post Office Box 10555
Tallahassee, Florida 32302-2555

DEREK PHILLIPS