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July 27, 2006

WAYNE L. SCHIEFELBEIN, OF COUNSEL  
ROBERT M. C. ROSE, (1924-2006)

**VIA HAND DELIVERY**

Blanca S. Bayo, Director  
Commission Clerk & Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

RE: Town and Country Utilities Company  
Our File No. 40050.03

RECEIVED - FPSC  
06 JUL 27 AM 10:43  
COMMISSION  
CLERK

Dear Ms. Bayo:

On behalf of MSKP III, Inc., attached please find an original and 15 copies of an Application for Transfer of Majority Organizational Control of Town and Country Utilities Company.

Please stamp and return a copy of this letter and application to my office acknowledging its receipt.

Sincerely

Wayne L. Schiefelbein  
Of Counsel

Check received with filing and forwarded to Fiscal for deposit. Fiscal to forward deposit information to Records.

Initials of person who forwarded check:

WLS/dcr  
Enclosure

RECEIVED & FILED  
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

06624 JUL 27 06

FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Application For Transfer of Majority  
Organizational Control of TOWN AND  
COUNTRY UTILITIES COMPANY in Lee and  
Charlotte Counties, Florida

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**APPLICATION FOR TRANSFER OF  
MAJORITY ORGANIZATIONAL CONTROL OF  
TOWN AND COUNTRY UTILITIES COMPANY**

MSKP III, Inc. ("Buyer"), by and through its undersigned attorneys and pursuant to the provisions of Rule 25-30.037, Florida Administrative Code, and 367.071, Florida Statutes, files this application for transfer of majority organizational control of Town and Country Utilities Company (the "Utility") and in support of this application, states:

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

Babcock Florida Company  
2220 Palmer Street  
Pittsburgh PA 15218

- B. The complete name and address of the Buyer is:

MSKP III, Inc.  
9055 Ibis Boulevard  
West Palm Beach, Florida 33412

2. The names and addresses of the persons authorized to receive notices and communications in respect to this application on behalf of the Buyer are:

Wayne L. Schiefelbein, Of Counsel  
John R. Jenkins, Esquire  
Rose, Sundstrom & Bentley, LLP  
2548 Blairstone Pines Drive  
Tallahassee, Florida 32301  
PHONE: (850) 877-6555  
FAX: (850) 656-4029

## BACKGROUND

3. The transfer of majority organizational control that is the subject of the instant application is one of a series of transactions which can be briefly summarized as follows:

(a) Utility is a wholly owned subsidiary of Babcock Florida Company. In July 2005, the Buyer entered into an Agreement whereby the Buyer and the Seller will merge, with Babcock Florida Company as the surviving entity (the "Merger Agreement"), and resulting in Buyer's acquisition of the Babcock Ranch ("The Ranch") and the Utility. The Ranch is 91,362 acres in total size of which approximately 81,499 acres are located in Charlotte County and approximately 9,863 acres are located in Lee County. The Ranch contains one of the single largest undeveloped tracts of land remaining in the State of Florida. The certificated water territory of the Utility is The Ranch property.

(b) The purchase of The Ranch by the Buyer will be followed by the sale of approximately 73,400 acres of ranch land to the State of Florida and Lee County (5,620 acres in Lee County to be acquired by the County) for preservation purposes. This acquisition by the State of Florida represents the single largest expenditure of State funds, for acquisition of preservation lands, in the history of the State of Florida.

(c) To that end, in November, 2005, the Buyer entered into an Agreement for Sale and Purchase with the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, the Florida Fish and Wildlife Conservation Commission, the Florida Department of Agriculture and Consumer Services, and Lee County, as purchasers of the 73,400 acres of The Ranch, which purchase is scheduled to close no later than July 31, 2006. The Utility will apply to the Florida Public Service Commission (the "PSC" or the "Commission") for approval of the transfer of water facilities located within said 73,400 acres to the State of Florida and Lee County, pursuant to Section 367.071, Florida Statutes, and Rule 25-30.037(4), Florida Administrative Code. The effect of that transfer, upon PSC approval, would be the deletion of said 73,400 acres from the Utility's certificated water territory.

(d) The Buyer will retain ownership of approximately 18,200 acres in the southwest portion of The Ranch, known as "Area 6," for development purposes. The development is in the planning stages. At this time it is expected to include approximately 19,500 residential units; 6 million square feet of nonresidential space (including hotel, office and retail); and golf course development (the "Project"). Closings on the Merger Agreement and the land sale to the State are scheduled for late July, 2006. Project planning is currently underway and permitting will be initiated shortly thereafter, with an estimated demand date for utility service of June, 2010.

(e) The Buyer intends, by a separate application, to seek certification as a wastewater utility within the said 18,200 acres, pursuant to Section 367.045, Florida Statutes, and Rule 25-30.033, Florida Administrative Code.

(f) The instant application for transfer of majority organizational control of the Utility is

an essential element in the foregoing transactions and their associated applications to the Commission.

### SUBSTANTIVE FILING REQUIREMENTS

4. The Buyer and the Seller have entered into an Agreement for Application to Transfer Utility whereby Seller agreed to authorize the instant application. A copy of that agreement is attached hereto as Exhibit "A."

5. The Closing on the Merger is presently scheduled to be held on or about July 31, 2006, prior to PSC approval of the associated transfer of majority organizational control involving the Utility. Accordingly, the parties have expressly recognized the authority of the PSC and the contingent nature of the transfer in paragraph 2 of said Agreement.

6. The parties have also agreed in paragraph 4 of said Agreement that a copy of the Merger Agreement may be made available to the PSC. A copy of the Merger Agreement will be made available for inspection by PSC Staff at the Tallahassee offices of either the undersigned counsel for Buyer or of Seller's designee, with redactions necessary to preserve the confidentiality of certain highly sensitive proprietary information which is wholly unrelated to the Utility and the transfer of majority organizational control of that Utility.

7. The Buyer provides the following information required by and pursuant to Rule 25-30.037(3), Florida Administrative Code:

(a) The complete name and address of the Seller is set forth in paragraph 1.A hereinabove.

(b) The complete name and address of the Buyer is set forth in paragraph 1.B hereinabove.

(c) The Buyer is a Florida corporation.

(d) The names of all of the Buyer's corporate officers, directors and shareholders are:

Sydney Kitson	Director/Chief Executive Officer and President
Thomas Hoban	Director/Chief Operating Officer and Secretary
Richard Brockway	Director
Charles DeSanti	Director
George Speer	Director/Chief Financial Officer and Assistant Secretary

The Buyer is (and after the merger, as Babcock Florida Company, the surviving entity, will remain) a wholly-owned subsidiary of MSKP Southwest Florida Investment Partners, Inc., a Florida corporation.

The business address for all the foregoing is 9055 Ibis Boulevard, West Palm Beach,

Florida 33412.

(e) The Buyer does not own any other water or wastewater utilities.

(f) Through the Merger, all of the outstanding capital stock of Babcock Florida Company will be acquired for cash. Buyer will finance the transaction through a combination of debt and equity. No financing of the purchase of the Utility is involved. No allocation of purchase price to the Utility is made under the Merger Agreement.

(g) The transfer is in the public interest.

(i) Upon closing of the Merger Agreement, the Utility will remain a wholly-owned subsidiary of the surviving entity, Babcock Florida Company.

(ii) Until the Utility is expanded to serve Area 6, its operations, and operating personnel will remain the same.

(iii) The Buyer will fulfill the commitments, obligations and representations of the Seller with regard to utility matters.

(iv) The acquisition described in paragraph 3(b) hereinabove would not be possible without the development of the remaining portion of The Ranch, and that development would not be possible without the water (and wastewater) service provided by the Utility.

(v) The Buyer has funding available as necessary to purchase and expand the Utility. The Buyer will make the financial and operating commitment necessary for the Utility to be successful in its endeavor to provide water (and, after PSC certification, wastewater) services to the residents of and businesses in the current and future developments within the Utility's service territory. Financial statements and related highly sensitive proprietary information regarding the financial backing of the Buyer will be made available for inspection by the Staff of the PSC at the offices of the undersigned counsel for the Buyer.

The Buyer is an affiliate of Kitson & Partners, LLC and Morgan Stanley. Kitson & Partners, LLC, headquartered in West Palm Beach, Florida, is a renowned international real estate company with four operating divisions. Kitson & Partners, LLC, is a premier developer with an established record of, among other things, developing, marketing and managing award winning and environmentally sensitive master planning and development in Florida. In 2001, Kitson & Partners, LLC, forged a strategic business alliance with Morgan Stanley that continues today. Morgan Stanley is a worldwide leader in investment banking and is ranked among the top institutions in mergers and acquisitions, underwriting of equity and equity-related transactions, high

yield debt financing and corporate debt issuance.

(h) After reasonable investigation, the utility systems operated by the utility which will be retained by the Buyer after the land sale to the State appear to be in satisfactory condition and in compliance with all applicable standards set by the Florida Department of Environmental Protection.

(i) When granting the Utility's original water certificate by Order No. PSC-99-2198-PAA-WU, issued on November 8, 1999, the PSC approved a Lease Agreement between Babcock Florida Company and the Utility for the water wells and treatment sites. A copy of said Lease Agreement is attached as Exhibit "B" hereto. Following the Merger, the land will be owned by Babcock Property Holdings, L.L.C., which will enter into the same lease arrangement with the Utility as the PSC previously approved. However, after the sale of the approximately 73,400 acres to the State of Florida and Lee County is closed, such lease arrangement would apply only to water facilities located on the approximately 18,200 acres being retained. Such amended lease agreement will be duly filed with the PSC after the closings of the Merger and the sale to the State of Florida and Lee County.

(j) The sole change to the tariff sheets would be the name of the issuing officer on each page. The Buyer requests that it be permitted to submit them after the closing is consummated.

(k) The Buyer requests that it be permitted to submit Original Water Certificate No. 613-W after the closing is consummated.

#### NOTICES

6. (a) Pursuant to Rule 25-30.030, Florida Administrative Code, the Applicants will provide all required notices.

(b) An affidavit that the Notice of Application for a Transfer of Majority Organizational Control was given to all certificated utilities and governmental authorities on the official list provided by the Commission for that purpose, will be late-filed as Exhibit "C."

(c) An affidavit that the foregoing notice was given to each customer of the Utility to be transferred will be late-filed as Exhibit "D."

(d) Proof of publication of the foregoing notice in newspapers of general circulation in the territory proposed to be transferred will be late-filed as Exhibit "E."

#### FILING FEE

7. The Seller's system has the capacity to serve more than 4,000 Equivalent Residential Connections (ERCs). Pursuant to Rule 25-30.020(c), Florida Administrative Code, the appropriate filing fee is \$3,000.00. A check in that amount accompanies this application.

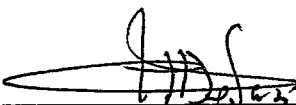
Respectfully submitted on this 27<sup>th</sup> day of July,  
2006:

ROSE, SUNDSTROM & BENTLEY, LLP  
2548 Blirstone Pines Drive  
PHONE: (850) 877-6555  
FAX: (850) 656-4029

By: Wayne L. Schiefelbein  
Wayne L. Schiefelbein, Of Counsel  
John R. Jenkins

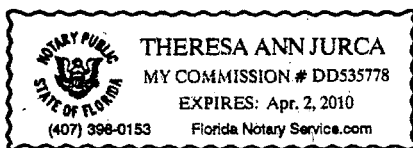
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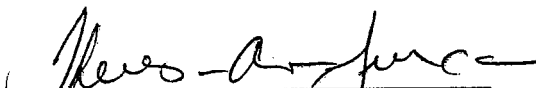
I, Charles DeSanti, do solemnly swear or affirm that to the best of my knowledge the facts stated in the forgoing application and all exhibits attached thereto are true and correct and that said statements of fact thereto constitutes a complete statement of the matter to which it relates.

BY:   
Charles DeSanti

Senior Partner  
Applicant's Title

Subscribed and sworn to before me this 25<sup>th</sup> day of July, 2006, by Charles DeSanti, who is personally known to me or who has produced \_\_\_\_\_ as identification. *(type of identification produced)*



  
Notary Public's Signature

(SEAL)



**EXHIBITS**

A: Agreement for Application to Transfer Utility

B: May 17, 1999 Lease Agreement

**EXHIBIT "A"**

Agreement for Application to Transfer Utility

**AGREEMENT FOR APPLICATION  
TO TRANSFER UTILITY**

THIS AGREEMENT ("Agreement") dated July <sup>25<sup>th</sup></sup>, 2006, is made by and among Morgan Stanley Real Estate Fund V — Domestic, L.P., a Delaware limited partnership (as successor-in-interest to Morgan Stanley Real Estate Fund IV — Domestic, L.P., a Delaware limited partnership) ("MSREF"), Kitson & Partners, LLC, a Florida limited liability company ("Kitson"), MSKP Southwest Florida Investment Partners, Inc. (formerly known as MSKP Mosaic Investment Partners, Inc. and referred to as "Newco"), a Florida corporation which was wholly owned by MSREF and Kitson and is now wholly-owned by MSREF and Kitson-Evergreen, LLC, a Delaware limited liability company (as successor-in-interest to Kitson and referred to as "Kitson-Evergreen"), MSKP III, Inc., a Florida corporation which is wholly owned by Newco ("Acquisition Sub", and collectively with Newco, the "Acquiror"; MSREF, Kitson-Evergreen and Acquiror collectively, the "Acquiring Companies"), and Babcock Florida Company, a Florida corporation (the "Company"), and the shareholders of the Company (the "Shareholders").

WHEREAS, the Company is the parent company of Town and Country Utilities Company, a Florida corporation ("Town & Country");

WHEREAS, Town & Country holds Florida Public Service Commission (the "PSC") Certificate No. 613-W (the "Utility");

WHEREAS, the Utility authorizes Town & Country to provide water service in Lee and Charlotte Counties, Florida;

WHEREAS, on or about July 25, 2006, the Acquiring Companies will acquire one-hundred percent (100%) of the stock of the Company from the Shareholders and thus will indirectly acquire one-hundred percent (100%) of the stock of Town & Country and the Utility (the "Transaction");

WHEREAS, Section 367.071(1), Florida Statutes, provides that no utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof, or majority organizational control without PSC approval unless the contract for transfer is made contingent upon PSC approval;

WHEREAS, the Acquiring Companies believe that the Transaction may be subject to Section 367.071(1), Florida Statutes, and desire to have the transfer of the Utility pursuant to the Transaction be in compliance with said statute;

WHEREAS, the Acquiring Companies intend to file an application with the PSC for approval of the transfer of the Utility prior to the closing of the Transaction (the "Closing");

WHEREAS, the Closing will likely occur prior to obtaining PSC approval;

WHEREAS, the Company and the Shareholders have agreed to authorize the Acquiring Companies to file such an application prior to the Closing subject to the terms and conditions contained herein.

NOW, THEREFORE, for and in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Acquiring Companies, the Company and the Shareholders hereby agree to the following:

1. The "Whereas" clauses contained in this Agreement are incorporated herein by reference and shall be deemed a part of this Agreement.

2. The Acquiring Companies are hereby authorized to file an application to transfer the Utility prior to the Closing, provided that, consistent with the requirement of Section 367.071(1), Florida Statutes, should the PSC not approve the application to transfer the Utility, the Shareholders and the Acquiring Companies shall undertake such actions as are reasonably necessary to effectuate the contingent nature of the transfer of the Utility pursuant to Section 367.071(1).

3. The Acquiring Companies, the Company and the Shareholders agree that nothing contained in this Agreement shall have any effect on the Transaction, including, without limitation, the date of the Closing, the payments due to or received by the Shareholders or the Acquiring Companies' ownership of one-hundred percent (100%) of the stock of the Company upon the Closing of the Transaction.


4. This Agreement and that certain Merger Agreement dated as of July 1, 2005, as amended from time to time, among the parties hereto (with such redactions as the parties hereto shall mutually agree) may be provided to the PSC; however, all other agreements (and all schedules therein and exhibits thereto) among the Acquiring Companies, the Company and the Shareholders are confidential, and neither the Acquiring Companies nor anyone acting on their behalf shall disclose any portion of such other agreements to any third party without the prior written consent of the Company and the Shareholders.

*[Signatures begin on next page]*

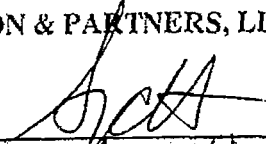
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

**ACQUIRING COMPANIES**


**MORGAN STANLEY REAL ESTATE FUND V  
- DOMESTIC, L.P.**

By:   
Name: Michael Quinn  
Title: Vice President

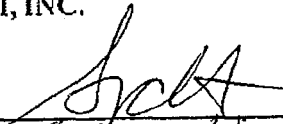
**KITSON & PARTNERS, LLC**

By:   
Name: Sydney Kitson  
Title: Chairman + CEO

**MSKP SOUTHWEST FLORIDA  
INVESTMENT PARTNERS, INC.**

By:   
Name: Sydney Kitson  
Title: President + CEO

**MSKP III, INC.**

By:   
Name: Sydney Kitson  
Title: President + CEO

COMPANY

BABCOCK FLORIDA COMPANY

By: Richard S. Cuda  
Name: RICHARD S. CUDA  
Title: PRESIDENT

SHAREHOLDERS

The undersigned, Shareholders' Representative, acting pursuant to the authority granted by each of the Shareholders pursuant to Section 12.1(e) hereby executes this Amendment on behalf of all of the Shareholders.

Richard S. Cuda  
Richard S. Cuda, Attorney In Fact

**EXHIBIT "B"**

May 17, 1999 Lease Agreement

**EXHIBIT "B"**

May 17, 1999 Lease Agreement



## LEASE AGREEMENT

THIS LEASE is made and entered into this 17<sup>th</sup> day of May, 1999 by and between "Babcock Florida Company", a Florida corporation (hereinafter referred to as ("Owner")), and "Town and Country Utilities Company, a Florida corporation (hereinafter referred to as ("Service Company")).

Owner hereby leases to Service Company, and Service Company hereby hires from Owner, the real property and Well Site Production Facilities described below, upon terms and subject to the conditions set forth herein.

### 1. DEFINITIONS.

The following definitions of terms used in this Lease shall apply unless the context indicates a different meaning:

- A. "Agreement" - That certain Assignable Service Agreement by and between Owner and Service Company dated \_\_\_\_\_, and pertaining to the supplying of water to the Property by Service Company.
- B. "Well Site Production Facilities" - All well casings, pumps, and water supply, transmission, and distribution pipes and equipment, and other appurtenant and associated facilities.
- C. "Point of Delivery" - The point where the water leaves the meter connected to customer's piping.
- D. "Property" - The land described in Exhibit "A".
- E. "Well Sites" - The sites upon which Well Site Production Facilities are currently located as shown on Exhibit "B" attached hereto, and such additional Well Sites permitted pursuant to this Lease.

### 2. TERM.

This Lease shall be effective for a period of ninety-nine (99) years, beginning immediately after certification of the Service Company by the Florida Public Service Commission, and ending ninety-nine (99) years thereafter, unless sooner terminated as provided herein.

### 3. ROYALTY PAYMENTS.

Service Company shall pay to Owner a monthly royalty of \$.20 per thousand gallons of water withdrawn from each well site and \$5,000 per year for maintenance

building site, plus sales tax, all as compensation for the Service Company's right to utilize owners property and the impact of Service Company's right to utilize and withdraw water from Owner's property and the impact of such uses on Owner's other properties. Royalty payments shall be paid on or before the first of each month. At least ninety (90) days but not earlier than one hundred twenty (120) days prior to the end of the third year of this Lease, and within the same period prior to the end of each succeeding 3-year period, Service Company and Owner shall renegotiate the periodic royalty to be paid over the next 3-year period. The purpose of renegotiating the periodic royalty is to reflect the increase in the fair value of the property, the rights to withdraw water, and Well Site Production Facilities over the last 3-year period. If Service Company and Owner are unable to agree on the amount of increase in the periodic royalty to be paid over the subject 3-year period, then at least forty-five (45) days but not earlier than ninety (90) days prior to the commencement of the subject 3-year period, Service Company and Owner shall agree upon a qualified appraiser who will calculate the increase in the periodic royalty to be paid over the subject 3-year period. If the parties are unable to agree upon an appraiser to be used, then Service Company and Owner shall select a qualified appraiser of its choice and make the calculations, and the average of the two appraisers shall be binding on the parties. Calculations by the appraiser or appraisers shall in either case be made and delivered to Service Company and Owner at least fifteen (15) days prior to the commencement of the subject 3-year period. Neither the calculations of the appraiser or appraisers nor anything contained herein shall operate to reduce the periodic royalty below the amount of the periodic royalty in effect at the time the negotiations or calculations are conducted as set forth herein.

In addition to renegotiating the periodic royalty every 3 years as set forth above, any time that, in Owner's reasonable opinion, the impact of any local, regional, state, or federal rule, ordinance, law, or policy directly or indirectly affects Owner's use of the Property or its other lands not subject to this Lease by further restricting or requiring changes in land or water uses near Well Sites, or as a result of withdrawals or activities related to withdrawals, Service Company and Owner shall renegotiate the periodic royalty. The purpose of this renegotiation shall be to reflect the diminution in value of the affected Property or other lands of Owner. At anytime that Owner reasonably deems such diminution in value to have occurred, Owner shall notify Service Company in writing and, within forty-five (45) days thereof, Owner and Service Company shall renegotiate the periodic royalty to compensate Owner for the diminution in value. If Owner and Service Company are unable to agree on a renegotiated periodic royalty, then Service Company and Owner shall agree upon a qualified appraiser who will calculate such compensation. If the parties are unable to agree upon a qualified appraiser to be used, the Owner and Service Company shall each select a qualified appraiser of its choice to make the necessary calculations, and the average of the two appraisers shall be binding on the parties.

4. DESCRIPTION OF LEASED PREMISES.

The premises subject to the Lease shall initially consist of the 322 non-potable and 31 potable Well Sites as outlined on Exhibit "B". Each Well Site shall be approximately 2,500 square feet or other size as needed, in a square configuration, with the Well Site Production Facilities approximately in the center of the sites. In addition, the proposed maintenance building site shall consist of approximately 2-3 acres. All portions of said Well Sites heretofore and currently used for residential or commercial facilities or purposes shall be excluded from said 2,500 square foot sites and shall not be included in the premises subject to this Lease. In the event any governmental entity or authority shall now or hereafter require a larger Well Site than 2,500 square feet, all additional or relocated Well Sites acquired pursuant to Sections 5 and 8, respectively, shall conform to the requirements of said governmental entity or authority. Owner and Service Company anticipate that this Lease may be amended in the future to include the service, operation, and lease of additional wells, surface water, or other sites, and/or Well Production Facilities pursuant to this Lease and will negotiate the terms under which those wells, surface water, or other sites, and any Well Production Facilities will be included in the Lease and the Agreement at that time.

5. ADDITIONAL WELL SITES & SURFACE WATER WITHDRAWAL SITES.

In the event that Service Company shall need additional Well Sites, and/or Well Production Facilities, Surface Water Withdrawal Sites or Water Storage Sites for the purpose of supplying Owner or third parties with water, Owner agrees to negotiate with Service Company for the lease of parcels of the Property for use as additional Well Sites, and/or Well Production Facilities, Surface Water Withdrawal Sites or Water Storage Sites. Upon such time as Service Company and Owner shall agree upon the location and other pertinent matters related to such additional Well Sites, and/or Well Production Facilities, Surface Water Withdrawal Sites, or Water Storage Sites the same shall become subject to this Lease and Service Company and Owner shall each respectively have rights and privileges set forth herein upon execution by Service Company and Owner of an appropriate Addendum to Lease so providing. Owner shall not be obligated to negotiate water rights to the detriment of its agriculture or other operatives.

6. WARRANTY OF TITLE.

Owner represents that it has good and marketable title to the Well Sites, subject only to real estate taxes not yet due and payable, matters of public record, and such other matters that do not materially interfere with Service Company's intended uses. Service Company may at any time undertake to examine title to any of the Well Sites. In the event that such examination of title shall result in the determination that there are title defects that are contrary to the status of title as above stated, Service Company may so notify Owner, specifying in writing such defects. Owner shall use diligent effort to remove or cure such defects in title within said time. In the event that Owner shall be

unable to remove or cure such title defects within the specified time, Service Company shall have the option of either waiving said title defects or canceling this Lease as to the Well Site to which title defects are applicable and receiving a prorata refund of any royalties paid in advance. In the event that uncured title defects shall adversely affect the Well Sites to the extent or degree that it materially interferes with Service Company's ability to perform its obligations under the terms of this Lease, Service Company shall be entitled to cancel this Lease and receive a prorata refund of any advance royalties paid on any of the Well Sites.

7. USE OF WELL SITES.

The Well Sites shall be used for the sole purpose of withdrawing water and supplying it to Owner or third parties in accordance with the provisions of the Agreement or third party agreements.

8. UNPRODUCTIVE WELL SITES.

If any Well Site becomes unproductive, upon written notice of the same to Owner, the unproductive Well Site shall no longer be subject to the terms of this Lease, and the periodic royalty shall be reduced prorata accordingly. In such event, the well shall be plugged at Service Company's expense in accordance with applicable Water Management District requirements and other applicable statutes, ordinances, or regulations. If Owner and Service Company cannot agree upon the amount of the reductions of the periodic royalty, the amount of the reductions shall be determined by a qualified appraiser selected by agreement of the parties. If the parties cannot agree on an appraiser, Owner and Service Company, at their own expense, shall each select an appraiser of its choice to calculate the reductions, and the average of the two calculations shall be binding upon the parties.

If Owner shall reasonably determine that for Owner's beneficial use of the Property and Well Site (whether an existing Well Site or on a Well Site hereafter leased) must be relocated, Owner will provide a substitute Well Site located as closely as reasonably possible to the one removed, and Owner shall bear the expense of such relocation, including cost of plugging. The periodic royalty shall be renegotiated based upon the costs of such relocation efforts.

Upon the abandonment of any Well Site, or the removal from any Well Site, Service Company shall clean up the Well Site and leave the same in neat and presentable condition.

9. PERMITS.

Prior to constructing or operating any Well Site Production Facility or servicing any customer, Service Company shall obtain, at its sole expense, unless specifically

provided otherwise in the Agreement, all necessary permits, certificates, and approvals necessary to construct and operate Well Site Production Facilities, withdraw water from Well Sites, transmit water to the Property and collect Tariffs for water supplied to customer and any other person or entity, as may be required by any governmental entity, including, without limitation, the applicable water management districts, Public Service Commission, county governments, U.S. Army Corp of Engineers, and the Department of Environmental Protection. The owner has the right to approve, prior to filing, the identity of the applicant and the form and substance of any such permit application.

#### 10. INSTALLATION OF WELL SITE PRODUCTION FACILITIES.

If any Well Site, whether initially subject to this Lease or hereafter leased, does not have complete and operable Well Site Production Facilities in place at the time of execution of this Lease or at the time such Well Site becomes subject to this Lease, then Service Company, at Service Company's expense, shall install the Well Site Production Facilities or replace the missing or defective parts necessary to eliminate the deficiency as soon as reasonably possible after the date of this Lease or after the date of acquisition in the case of a Well Site hereafter acquired.

#### 11. MAINTENANCE AND REPAIR.

As of the effective date of this Lease (in case of existing Well Sites and Well Site Production Facilities), and after the initial installation as set forth in Section 10 above (in the case of those facilities covered by Section 10), Service Company shall be responsible for the continuous operation and maintenance of the Well Sites and Well Site Production Facilities during the term of this Lease, unless otherwise agreed in writing by Service Company and Owner. Service Company's responsibilities shall include replacement of any component parts of the Well Site Production Facilities when such becomes necessary due to destruction, wear and tear or otherwise. Service Company shall also keep the Well Sites in a neat, clean and presentable condition. Owner agrees to assign any and all warranties and/or maintenance bonds and the right to enforce the same to Service Company and to provide Service Company with any existing operation/maintenance and parts manuals with respect to the Well Site Production Facilities. Customer's pipes, apparatus and equipment on customer's side of the Point of Delivery shall be selected, installed, used and maintained in accordance with good practices in the industry and in full compliance with all applicable laws and governmental regulations. Service Company shall, at all reasonable times and hours, have the right to inspect Customer's internal lines and facilities. Customer shall bear the responsibility for the maintenance and replacement of any pipes or related transmission equipment on Customer's side of the Point of Delivery.

12. ELECTRICAL POWER.

Service Company represents that electrical power for the proposed operations on all Well Sites requiring electricity is available from the appropriate power companies having authority to serve the Well Sites. Owner shall reasonably cooperate with Service Company in assisting Service Company to obtain electrical power from the closest power source of the appropriate power company to each Well Site, including additional Well Sites hereafter acquired, so as to service the operations of Service Company at each Well Site. Owner shall have the right to approve the location of poles, transistors, electrical lines, or other necessary installations, and Owner shall not unreasonably withhold such approval. Owner shall have the right to require underground installation of utilities. Service Company shall bear all expenses incurred in connection with the installation and continued service by the appropriate power company. Service Company shall reimburse Owner for any attorney's fees incurred by Owner in connection with the preparation, review, or negotiation of documents or for consultations in relation to obtaining and maintaining electrical power for the proposed operations at each Well Site, including but not limited to the placement of poles, transistors, electrical lines and other necessary installations.

13. INGRESS AND EGRESS.

Owner hereby grants Service Company nonexclusive ingress and egress to the Well Sites during the period of time this Lease remains in force and subject to the limitations of this Section. Service Company's nonexclusive right of ingress and egress may be exercised only during the times and solely for the purposes set forth in this Lease. If county or state roads provide reasonable means of ingress and egress to the Well Sites, Service Company shall use such county or state roads. In the event that ingress and egress is available only upon roads other than county or state roads, Service Company shall so notify Owner, and Owner shall specify existing roads or ways for ingress and egress to be used by Service Company. Owner shall make reasonable efforts to specify roads or ways located so as to permit Service Company to exercise and enjoy the privileges created by this Lease without undue interference, but Owner shall have no affirmative obligations to improve, maintain, or repair any such road for use by Service Company. In specifying roads for ingress and egress, Owner shall from time to time instruct Service Company as to specific gates to be used and procedures for locking and unlocking gates. Service Company agrees to comply with such instructions of Owner. Service Company shall be solely responsible for security on all gates used by Service Company for ingress and egress. Any roads or accessways used by Service Company shall be used by Service Company at its own risk and shall be maintained by Service Company so as to permit continued safe vehicular passage and shall be left in a condition at least as good as originally found by Service Company at the commencement of this Lease. Owner agrees that, in the event Owner leases additional Well Sites to Service Company, Owner shall grant to Service Company such additional easements as may be necessary to provide ingress and egress to such additional Well Sites.

14. LOCKS, GATES, FENCES.

Service Company shall place no new locks on Owner's gates without the prior consent of Owner. If Owner permits Service Company to place locks on its gates, the locks shall be clearly identified to Owner and placed so that they will not prohibit access by others who have locks on the gates. Service Company shall give keys only to authorized employees.

Service Company agrees that it shall immediately close and securely fasten gates or gaps in fences that are opened by Service Company or observed open, whether or not such were opened by someone else. No new gaps or gates shall be made in any fence without the prior consent of Owner.

Service Company shall in no way tamper with, alter, or modify any of Owner's existing fences or cattle or wildlife control equipment or devices without the prior consent of Owner. In the event any fences require repair due to the negligence or other activities of Service Company, Owner shall make such repairs and Service Company shall indemnify Owner for the costs of such repair.

15. PROHIBITED ACTIVITIES.

Service Company shall not take or remove, kill, or otherwise molest any livestock or wildlife on any of Owner's lands. Service Company covenants that Service Company will save Owner harmless from all damage caused by Service Company or its agents or employees to such livestock or wildlife and to promptly notify and reimburse Owner for any such damage. No hunting or fishing shall be permitted on any of Owner's lands by Service Company, its agents, or employees. Service Company shall at no time have dogs or guns or firearms on any of Owner's lands. Service Company will at no time cause any fires to be set on any of Owner's lands, except for the purposes of disposing of debris and only with the prior written consent of Owner. If Owner grants consent, Service Company shall be solely responsible for obtaining the necessary and required permits and for all expenses related thereto. If any employees, agents, or subcontractors of Service Company shall violate the provisions of this 15, Owner shall be entitled to require that such person or persons be prohibited from subsequently coming onto Owner's lands. Should Service Company fail to exercise reasonable measures to prevent such person or persons from subsequently coming onto Owner's lands, such act shall be deemed a default hereunder.

16. INSPECTION BY OWNER.

Owner or Owner's agent may at any time enter upon any Well Site to view the condition thereof and to observe Service Company's operations thereon.

17. REAL ESTATE, PERSONAL PROPERTY AND INTANGIBLE TAXES.

Service Company shall pay all real estate, personal property, and intangible taxes, and all increases in real estate taxes on the Well Sites and Well Production Facilities accruing during the time that this Lease remains in force, including any increases resulting from the construction of any additions or improvements or the installation of any equipment on the Well Sites (which in order to do, Service Company shall first obtain the written consent of Owner, except for those installations expressly permitted by Owner under this Lease or in the Agreement), whether actual payment of such taxes is made during the term of this Lease or thereafter. If this Lease begins other than on the first day of the tax year, or if this Lease ends other than on the last day of the tax year, then the parties shall make appropriate adjustments or prorations. Additionally, Owner and Service Company acknowledge and agree that the taxes imposed upon the Property and/or Well Production Facilities and other taxes shall be computed and based on the most recently available valuations, millages, assessments, and other information (including information included in a "cut-out" customarily prepared by the county) provided by the county in which the Property is located.

18. OTHER TAXES.

Service Company shall pay all sales taxes, if any, license taxes, and any and all other taxes, except income taxes of Owner, with respect to Service Company's operations hereunder.

19. INSURANCE.

Service Company shall obtain insurance for both liability and property and Well Production Facilities at all times during the term of this Lease, and in amounts sufficient to cover all reasonable damage or claims to the property or by third persons and shall specifically name the Owner as co-insured with Service Company. Service Company shall obtain such insurance at its sole cost and expense and shall be fully responsible for all payments and renewals related to such policies.

20. HOLD HARMLESS, ATTORNEY'S FEES.

A. Indemnity to Owner.

Service Company shall indemnify and defend Owner and hold Owner harmless from and against every claim or demand with respect to bodily injury, death, property damage, nuisance, or other loss or damage of any kind, including attorney's fees and costs incurred by Owner, arising out of Service Company's negligence in the use or occupancy or operation of any Well Site, Well Site Production Facility, or any Service Company's activities on or about any Well Site. Service Company's duty to indemnify shall include indemnification from and against any fine, penalty, liability, or



cost arising out of Service Company's violation of any law, ordinance, or governmental regulation applicable to Service Company's use or occupancy of any Well Site or Service Company's activities on or about any Well Site, or other of Owner's lands.

B. Indemnity to Service Company.

Owner shall indemnify and defend Service Company and hold Service Company harmless from and against every claim or demand with respect to bodily injury, death, property damage, nuisance, or other loss or damage of any kind, including attorney's fees and costs incurred by Service Company, arising out of Owner's negligence in discharging its duties under the lease of any Well Site, Well Site Production Facility, or Owner's activities on or about any Well Site. Owner's duty to indemnify shall also include indemnification from and against any fine, penalty, liability, or cost arising out of Owner's violation of any law, ordinance, or governmental regulation applicable to Owner's use or occupancy of any Well Site or Owner's activities on or about any Well Site.

C. "Costs and Attorney's Fees.

In the event Service Company or Owner brings an action to enforce this Lease by Court proceedings or otherwise, then the prevailing party shall be entitled to recover from the other party all costs incurred, together with reasonable attorney's fees at all levels, including appeals.

21. DEFAULT.

The occurrence of one or more of the following is an event of default by Service Company: the failure of Service Company to perform any obligation for the payment of money within 15 days after the time within which the payment is to be made as provided in the section of this Lease creating the obligation; the failure of Service Company to perform and comply with any obligation imposed upon Service Company by this Lease, other than the payment of money, and the failure continues beyond a reasonable period of time for curing such failure to perform, after written notice thereof from Owner to Service Company, except that any breach by Service Company of the obligations set forth in Section 15 shall be deemed a default hereunder without any notice, grace, or curative period; proceedings under the Bankruptcy Act for bankruptcy are filed by or against Service Company, and if filed against Service Company, have not been dismissed within thirty (30) days after the filing; assignment of Service Company's property for the benefit of creditors is made; a receiver, conservator, or similar officer is appointed by a court of competent jurisdiction to take charge of all or a substantial part of Service Company's property, and within thirty (30) days after appointment the officer is not discharged and possession of the property is not restored to Service Company; Service Company's interest in the Well Sites and Well Site Production Facilities, or under this Lease or the Agreement is the subject of taking or levy under execution,

attachment, or other process of law and the action is not canceled or discharged within thirty (30) days after its occurrence; Service Company abandons the Property; or Service Company defaults under this Agreement.

If Owner shall default in any of its obligations hereunder, Service Company shall give written notice thereof to Owner, and Owner shall have a reasonable period of time after receipt of such notice in which to cure such default. Any default of Owner under the Agreement shall be deemed a default hereunder.

Owner and Service Company shall have the right to terminate this Lease for any default of the other; provided that where curative periods are applicable, Owner and Service Company may only terminate if the default remains uncured through the expiration of such curative periods.

22. ASSIGNABILITY.

Service Company may not assign, pledge, or encumber Service Company's rights hereunder. Any assignment, pledge or encumbrance of Service Company's stock shall be deemed a prohibited assignment hereunder and a default under the terms of this Lease.

23. RECORDING.

Neither Owner nor Service Company shall record this Lease without prior written consent of the other, which consent shall not be unreasonably withheld.

24. ADDRESSES, NOTICES; TIME.

Notices hereunder shall be given by manual delivery, telegraph, or mail addressed as provided below. For the purpose of this Lease, the addresses of the parties are:

Owner:

Blake Equipment  
61 West Dudley Town Road  
Bloomfield, CT 06002

Service Company:

Town and Country Utilities Company  
8000 State Road 31  
Punta Gorda, FL 33982

Notice given by telegraph shall be deemed received when filed for transmission with an authorized dispatching office of the telegraph company in the United States, charges prepaid. Notice given by certified mail shall be deemed received when deposited in the United States mails, postage prepaid. Notice given otherwise shall be deemed received when received at the address to which sent or when actually received by the party to whom addressed. Either party may change its address by giving written notice to the other, but the change shall not become effective until the notice is actually received by the other party. Payments due Owner hereunder shall be made to Owner at Owner's address set forth above (or at a changed address as provided above). If the last day for giving any notice or performing any act hereunder falls on a Saturday, Sunday, or a day on which the United States post offices are not open for the regular transaction of business, the time shall be extended to the next day that is not a Saturday, Sunday, or post office holiday.

25. BINDING EFFECT OF LEASE.

This Lease shall be binding upon and shall inure to the benefit of Owner, Service Company, and their respective assigns and successors by merger, consolidation, conveyance, or otherwise, subject to the limiting terms of this Lease.

26. DOCUMENTATION.

Service Company and Owner agree that each shall execute such other documentation as may reasonably be required from time to time to effectuate the intent of this Lease.

27. INTERPRETATION.

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

28. EFFECTIVE DATE.

This Lease shall become effective and binding upon Owner and Service Company at the time of execution by both parties.

29. STRICT COMPLIANCE.

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

30. CONFLICT WITH THE AGREEMENT.

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

IN WITNESS WHEREOF, Owner and Service Company have caused this Lease, with the named Exhibits attached, to be duly executed in several counterparts, each of which shall be considered an original executed copy for all purposes.

Signed, Sealed and Delivered  
in the Presence of:

Babcock Florida Company

Barbara A. Murray  
Susan Arguimbau

By: Richard S. Cook, Pres.  
"Owner"

Town & Country Utility Company

Barbara A. Murray  
Susan Arguimbau

By: John S. Cook, Pres.  
"Service Company"

babcocklease.agr