

D. Bruce May, Jr.
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bruce.may@hklaw.com

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COMMISSION
CLERK

Via Hand-Delivery

August 29, 2008

Mr. Ralph Jaeger, Esquire
Florida Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: *In re: Application for staff-assisted rate case in Pasco County by Holiday Utility Company, Inc., Docket No. 070394-WU*

Dear Mr. Jaeger:

Our law firm has been retained by Holiday Utility Company, Inc. ("Utility") to address a specific and limited item in Issue No. 7 in staff's recommendation dated August 7, 2008, which is currently scheduled for consideration by the Commission on September 4, 2008. The item in question involves legal fees incurred by the Utility to defend against a lawsuit that challenged the Utility's legal right to access well sites that it had openly and continuously used for over 20 years. Staff recommends that those legal fees should not be included as an amortized expense, apparently on the assumption that the Utility's legal right to access the well sites was deficient. That assumption may stem from staff not having all of the relevant facts. We respectfully submit that a thorough review of those facts will show that the Utility had valid and enforceable legal rights to the well sites, and that it was prudent and in the customers' interests for the Utility to vigorously defend its well sites from legal attack. Thus, as will be explained in detail below, we respectfully request that the staff review the information presented and revisit its recommendation on this specific issue.

Relevant Facts

The facts regarding the legal challenge to the Utility's property rights are undisputed. The Utility was originally owned by the Mickler family, which also owned in fee simple the land upon which the subject well sites are located ("Subject Property"). The Utility established its well field system on the Subject Property in the late 1960s.¹ The Utility was certificated by the

¹ Staff's recommendation leaves the mistaken impression that the well fields on the Subject Property are of limited number and scope, and thus understates the Utility's significant and obvious presence on the Subject Property. For example, the Utility's Westwood area has a total of 14 wells, 11 of which are on the Subject Property. All of these wells are fully connected by 6 inch and 8 inch piping to an above-ground hydro tank. Thus, Staff's recommendation understates the Utility's significant and obvious presence on the Subject Property.

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Commission in 1975. *See In re: Application of Holiday Utility Company for a certificate to operate a water system in Pasco County, Florida*, Docket No. 73489-W, Order No. 6780 (July 17, 1975).

In 1982 the Mickler family sold the Subject Property to the Dimmitt family pursuant to a "Notice of Easement" that put the Dimmitt family on specific notice that the Utility's wells and water system were located on the Subject Property. A copy of the Notice of Easement is attached as Exhibit "A". In 2003, the Mickler family sold the Utility to its current owners with a description of the system that included the subject well fields, wells, and piping. *See In re: Application for transfer of majority organizational control of Holiday Utility Company, Inc. in Pasco County to Holiday Waterworks Corporation, and amendment of Certificate No. 224-W*, Docket No. 030458-WU, Order No. PSC-06-0380-FOF-WU (May 8, 2006).

In Docket No. 041145-WU, the Commission expressed concern that the Utility lacked a bona fide back-up water supply source, and therefore established rates that allowed the Utility to strengthen its back-up water supply system. In effort to address the Commission's concerns with respect to back-up water supply, the Utility began to make improvements to its wells on the Subject Property in November, 2004.

After the Utility began work on its well improvement program, a real estate developer expressed interest in acquiring the Subject Property from the Dimmitt family and identified concerns about the ongoing utility operations thereon. Thereafter, in March 2005 the Dimmitt family filed a lawsuit challenging the lawful presence of the Utility's wells and facilities on the Subject Property.

The Utility's Legal Right To Access Its Well Sites

Since at least 1982, the Utility has openly utilized wells and pipes located on the Subject Property. The Dimmitt family had clear and visual knowledge of this use by the Utility, and made no objection to such use until after the Utility started work on its well improvement program in 2004. Staff's recommendation suggests that because the Utility did not have easements for all of its well sites that its legal right to access its wells was deficient.² That simply is not the case. As indicated in the Utility's answer and affirmative defenses to the Dimmitt lawsuit, the Utility had a prescriptive easement to the Subject Property because (i) the Utility and its predecessors in title made actual, continuous and uninterrupted use of the Subject Property for over twenty years, (ii) the Dimmitt family had actual knowledge of such use; and, (iii) over that entire period, the Dimmitt family could have sued to prevent further use but elected not to do so.

² The one well that is covered by a recorded easement is situated within a unique tank site easement, which is a rectangular easement parcel granted separately for the above ground features of the hydro tank, chemical storage and chemical feed unit. The tank easement has special requirements which call for sight barriers and landscaping to visually enhance the area, requirements that are not typical of well field or pipeline access arrangements.

In addition, the Utility had valid and legally enforceable rights to access its wells under applicable statutes of limitations³ and the doctrine of laches.⁴

The Utility's Defense of the Lawsuit was Prudent and in the Ratepayers' Interest

Faced with the Dimmitt's lawsuit challenging the Utility's right to access its wells, the Utility had 3 options: it could preserve its water supply by defending its legal rights of access; it could acquire legal title to the well sites by exercise of eminent domain; or, it could concede the lawsuit, and reconfigure its water system either by paying substantial impact fees to Pasco County in excess of \$320,000 for back-up connection, or by purchasing alternative well sites outside of the Subject Property. The Utility thoroughly analyzed its options and concluded that it would be economically infeasible and imprudent for it to acquire title to the well sites by eminent domain. Likewise, after detailed study, the Utility concluded that conceding the lawsuit and paying substantial impact fees to Pasco County, or purchasing redundant well sites outside of the Subject Property, would come at a substantial cost to its customers. In other words, the Utility reasonably concluded that the costs of pursuing those latter two options far exceeded the costs of defending the Utility's clear legal rights to access the well sites. Indeed the Utility's decision to defend the lawsuit was validated by the Settlement Agreement entered into by the parties in June, 2008, which among other things, required the Dimmitts to pay for the relocation of the Utility's pipeline which amounts to a \$200,000 contribution to the Utility, and the granting of a new easement across the Subject Property to serve other well locations. A copy of the Settlement Agreement is attached as Exhibit "B".

The staff recommendation suggests that the Utility was remiss in not acquiring an additional easement to the well sites from the Dimmitt family. That position assumes that the Utility had reason to doubt its legal right to access the well sites. That simply is not the case. As explained above, the Utility openly utilized wells and pipes located on the Subject Property without objection from the Dimmitt family for over 22 years. Prior to starting work on its well improvement program in 2004, there was no credible reason for the Utility to question its right to access and utilize its wells on the Subject Property. To suggest otherwise is to apply facts as we know them today to the Utility's decisions made in the past. The Florida Supreme Court has made it clear that it is improper for the Commission to impose that type of hindsight review. See, *Florida Power Corp. v. Cresse*, 413 So. 2d 1187 (Fla. 1982); *Florida Power Corp. v. Public Service Comm'n*, 424 So. 2d 745 (Fla. 1982); and *Florida Power Corp. v. Public Service Comm'n*, 456 So. 2d 451 (Fla. 1984).

We respectfully submit that the legal fees incurred by the Utility to defend the lawsuit and protect its well sites were reasonable and prudent expenditures that benefited the customer,

³ As an affirmative defense, the Utility asserted that the Dimmitt lawsuit was barred by the applicable statutes of limitation because it was based on actions taken by the Utility or its predecessors in title more than twenty years prior to the filing of the lawsuit.

⁴ As an additional affirmative defense, the Utility asserted that the doctrine of laches barred the lawsuit because (1) it had openly utilized pipes and wells located on the Subject Property; (2) at no time prior to November 2004 did the Dimmitt family request the Utility to discontinue its open, adverse, notorious and continuous use of the pipes and/or wells located on the Subject Property; and, (3) that in reliance on the Dimmitt family's inaction for over twenty years, the Utility had develop its water utility business.


Ralph Jaeger
August 29, 2008
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especially when compared to the two other options that were cost prohibitive. Moreover, allowing the Utility to include those expenses in rates is entirely consistent with the Commission's policy of encouraging a regulated company to take proper legal action to protect its rights as a utility. For example, the Commission has specifically recognized that it is appropriate for a utility to incur legal fees to defend a lawsuit if, as is the case here, the concession of its legal position would create "adverse economic consequences." See *In re: Application of Southern States Utilities, Inc. for increased water and wastewater rates in Collier County (Marco Island Utilities)*, Docket No. 920655-WS; Order No. PSC-93-1070-FOF-WS (July 23, 1993). See also *In re: Application of Debarry Associates, Inc. for Staff-assisted rate case in Volusia County*, Docket No. 890792; Order No. 22569 (February 19, 1990) (legal fees incurred by the utility in a dispute over the utility's well site lease was allowed to be included as an amortized expense); *In re: Petition of Florida Power Corporation for authority to revise its rates and charges so as to give said utility an opportunity to achieve the earnings level authorized by the Commission in Order No. 5619, entered in Docket No. 71370-EU, Docket No. 74061-EU, Order No. 6094 (April 5, 1974)* (legal fees associated with a utility defending its franchise territory against an antitrust lawsuit by a municipality was allowed as an appropriate utility expense).

For all of the foregoing reasons, the Utility respectfully requests that staff revisit its recommendation on this specific issue, and determine that \$120,971 in legal fees incurred by the Utility to defend the Dimmitt lawsuit be included as an amortized expense.

Please do not hesitate to contact me if you have questions or need additional information. Thank you for your consideration.

Sincerely,



D. Bruce May, Jr.

DBM:kjg
Enclosures

cc: Ms. Shannon Hudson
Ms. Ann Cole, Commission Clerk
Mr. Gary Deremer

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NOTICE OF FORTHCOMING GRANTS OF EASEMENTS

THE UNDERSIGNED, Bart Mickler (a/k/a Bart L. Mickler, Bartley L. Mickler, and B. L. Mickler) of Pasco County, and Larry Dimmitt Cadillac, Inc., a Florida corporation, hereby give notice of the following easements to be placed of record hereafter benefiting and burdening the following designated parcels of real property located in Pasco County, Florida, and legally described on the attached Exhibit A, which by this reference is incorporated herein:

- (a) an easement or easements for drainage, roadway, and/or underground utility purposes to benefit Parcel 1 and burden Parcel 2;
- (b) an easement or easements for drainage, roadway, and/or underground utility purposes to benefit Parcel 1 and burden Parcel 3; and
- (c) an easement for underground utility purposes to benefit Parcel 5 and burden Parcel 4.

This notice shall stand cancelled two years from this date or as to each easement as the same is placed of record, whichever shall take place earlier.

EXECUTED this 20th day of August, 1982, in Pasco County, Florida.

Signed, Sealed, and Delivered in the presence of:

[Signature]
[Signature]

[Signature] (SEAL)
Bart Mickler

LARRY DIMMITT CADILLAC, INC., a Florida corporation,

By [Signature]
As its

(affix Corporate Seal Here)

Documentary Tax Pd. \$ 45

\$ Intangible Tax Pd.

Jed Pittman, Clerk, Pasco County

[Signature] Det. Clerk

STATE OF FLORIDA)
COUNTY OF PASCO)

The foregoing instrument was acknowledged before me this 20th day of August, 1982, by BART MICKLER.

NOTARY PUBLIC
STATE OF FLORIDA

[Signature]
Notary Public

My commission expires:

9-10-83

Notary Public, State of Florida at Large
My Commission Expires Sept. 10, 1983
Bonded By American Fire & Casualty Company

STATE OF FLORIDA)
COUNTY OF PASCO)

The foregoing instrument was acknowledged before me this 20th day of August, 1982, by Larry H. Dimmitt, Jr. as President of LARRY DIMMITT CADILLAC, INC., a Florida corporation, on behalf of the corporation.

[Signature]
Notary Public

My commission expires:

10-17-82

Notary Public, State of Florida at Large
My Commission Expires Sept. 10, 1983
Bonded One Hundred Thousand Dollars

THIS INSTRUMENT PREPARED BY:
RICHARD W. REEVES
ATTORNEY AT LAW
POST OFFICE BOX 3332
TAMPA, FLA. 33601

Exhibit A

LAWYERS TITLE INSURANCE CORPORATION
Suite 307, 1125 Executive Office Building
1125 U.S. Highway 19 S.
New Port Richey, FL 33562

6-8-85

AGREEMENT

This Agreement ("Agreement") is by and between DIMMITT CAR LEASING, INC. ("Dimmitt") SUN AUTOMOTIVE, INC. ("Sun") HOLIDAY UTILITY COMPANY ("Holiday") and US WATER SERVICES CORP. ("US Water"). The Effective Date of this Agreement will be the date when the last party has signed this Agreement.

RECITALS

WHEREAS Dimmitt owns the real property in Pasco County, Florida described in Exhibit A, which consists of 30.84 acres (the "Property"); and

WHEREAS the Property has been designated as an MPUD Master Planned Unit Development in which 14.73 acres in the eastern portion of the Property is designated for commercial development (Phase I) and the remaining 16.11 acres are designated for residential development (Phase II); and

WHEREAS Dimmitt and Sun have entered into a Sale and Purchase Agreement for Commercial Land dated July 10, 2007 and Addendum dated September 25, 2007 whereby Sun is to purchase the Property; and

WHEREAS Sun intends to develop Phase I of the Property as an automobile dealership and at the present time has no immediate plans for the development of Phase II of the Property; and

WHEREAS Holiday has a grant of territory from the Florida Public Service Commission ("PSC") to provide water utility services to the Property through water transmission lines and wells located on the Phase II portion of the Property; and

WHEREAS Dimmitt filed a lawsuit against Holiday and US Water contesting the lawful existence of Holiday's water transmission lines and wells on the Property and asserting as causes of action ejectment, trespass, unjust enrichment, conversion, quiet title and accounting (the "Claims"); and

WHEREAS at the time of the closing on the sale of the Property to Sun, Dimmitt shall file a Notice of Dismissal of its lawsuit, with prejudice, thereby dismissing all of the Claims relating to the existence of the water transmission lines and wells located on the Property; and

WHEREAS upon the sale of the Property to Sun and the simultaneous dismissal of the lawsuit, all parties to this Agreement acknowledge Holiday's right to have water utility systems on the Property; and

WHEREAS Dimmitt and Sun wish to have Pasco County provide water and wastewater utility service to the Property and Holiday has no objection to Pasco County providing such water utility service; and

WHEREAS in order for Pasco County to provide water utility service to the Property, Holiday will be required to file an application with the PSC requesting the Property be removed from the Holiday Territory granted by the PSC and Pasco County be substituted for Holiday as the provider of water utility service for the Property (the "Application"); and

WHEREAS US Water, as agent for Holiday will file the Application; and

WHEREAS once the PSC grants Pasco County the right to provide water utility service to the Property, US Water, as agent for Holiday, will, at the request of Sun (which will then have purchased the Property from Dimmitt) relocate the transmission lines on Phase II of the Property; and

WHEREAS, the purpose of this Agreement is to set forth the terms by which the responsibilities set forth in these Recitals will be carried out.

NOW THEREFORE, in consideration of the benefits to come to each party, the parties agree as follows:

1. Payment for Purchase of Service Territory Rights. Dimmitt at the Effective Date agrees to purchase the water service rights for the Property (the "Rights") which Rights are owned by Holiday.

2. Purchase Price for Service Territory. The purchase price for the Territory is One Hundred Ninety Three Thousand Six Hundred Dollars (\$193,600.00). The purchase price is based upon the purchase of eighty eight (88) ERC's at a unit price of \$2,200. Dimmitt will pay on the Effective Date of this Agreement the sum of \$193,600.00 into the escrow account held by Macfarlane Ferguson & McMullen ("Escrow Agent") and sign an escrow agreement in the form attached hereto as Exhibit B.

3. Application for Territory Modification of Holiday and Granting Rights to Pasco County. Presently, Holiday is designated by the Florida Public Service Commission as the water provider for the Property. In order for Pasco County to acquire the water rights to the Property, the PSC must delete Holiday as the water provider for the Property. Holiday, through its agent, US Water, agrees to file a request for a territory boundary modification with the PSC within fourteen (14) days after the Effective Date of this Agreement and to diligently pursue the request for the deletion. Holiday's Application will request that once Holiday relinquishes its rights to provide water to the Property, those rights, licenses and permits will be granted by the PSC to Pasco County, Florida. Holiday's request will ask the PSC to designate Pasco County, Florida as being the water provider for the Property enabling Pasco County to provide water and

wastewater service to the Property. Dimmitt (or Sun after purchasing the Property) will cause the County to make application for the assignment of service territory rights for the Property to the County, as may be required by the PSC. Upon the approval by PSC, a Developer Service Agreement or Bulk Water Agreement (or both) will be entered into between Pasco County and Sun.

4. Disbursement from Escrow. When Holiday receives information from the PSC that the PSC has granted the Rights to Pasco County, the Escrow Agent will disburse to Holiday the \$193,600.00 held in escrow.

5. Dimmitt and Sun intend to close on the purchase of the Property on June 16, 2008 (the "Closing"). Within seven (7) days after Closing, Holiday will install, at Sun's expense, a water meter in the Holiday water line which provides water to Phase I of the Property. This meter will allow Sun to have water during the development of Phase I as an automobile dealership. Sun will pay to Holiday the expense of the water it uses at the current rate charged to Holiday's customers. When the PSC grants Pasco County the ability to provide water utility service to the Property, Sun will connect to Pasco County's water line when such service connection is made available by the County and the use of the line metered by Holiday will be terminated.

6. Escrow of Documents. At Closing, the following documents will be placed in escrow with Allgood & Misemer, P.A.:

- i. Release of License Agreement with Holiday Utility Company, attached as Exhibit C.
- ii. Release of Escrow to Holiday Utility Company, attached as Exhibit B.
- iii. Easement between Sun Toyota and Holiday Utility, attached as Exhibit D.

Exhibits C, B, and D are the "Escrow Documents". When PSC grants the Rights to Pasco County, the Escrow agent shall record the Escrow Documents.

7. Relocation of Water Lines and Removal of Existing Lines and Capping of Wells. Presently there are water transmission lines which cross the Phase II portion of the Property and provide water to customers of Holiday to the north of the Property. There are also wells located in the Phase II portion of the Property. In order to develop the Phase II portion of the Property, the water lines need to be relocated to serve Holiday's customers and the lines crossing the Phase II portion of the Property need to be removed and the wells capped. US Water, as agent of Holiday, will be the contractor that will relocate the water lines and remove all or a portion of the existing lines at the election of Sun and cap the wells (these services being referred to as the "Work"). Exhibit F reflects the location of the relocated lines, the existing lines and the existing wells and other improvements proposed by Sun. The development of Phase II shall include the use of sanitary sewers connected to the Pasco County wastewater system and the placement of residential units or any other wastewater source shall not be within the

well head protection zone for those wells designated on Exhibit F. US Water has indicated the cost to provide the Work will be \$209,800. Exhibit G reflects the costs involved in providing this Work. If the Work is commenced within six (6) months of the date of this Agreement, the costs reflected in Exhibit G will be the cost charged by US Water. If the Work is commenced more than six (6) months from the date of this Agreement, US Water will refigure the cost to be charged for its services.

A. Sun agrees to purchase the Property from Dimmitt on June 16, 2008. The PSC may not have approved the transfer of the water Territory by Closing. However once Sun becomes the owner of the Property, it will be the party which will determine the time and extent of the Work to be performed by US Water in the Phase II portion of the Property but in no event shall the initiation of permit applications for such Work begin later than four (4) months from the date of this Agreement and construction of the Work shall begin no later than two (2) months from the issuance of said permits.

B. Dimmitt agrees to provide to Sun at the closing of the sale of the Property a credit against the purchase price in the amount of Two Hundred Six Thousand Four Hundred Dollars (\$206,400.00) as its contribution towards the cost of the Work to be performed by US Water. After the closing, Dimmitt will have no further responsibility to pay any expenses for the Work to be performed by US Water.

C. Once Sun advises US Water to go forward with the Work, US Water shall obtain permits for the Work shown on Exhibit G. Upon receipt of the necessary permits, Sun shall issue a Notice to Proceed for the construction work in accordance with Paragraph A. above. US Water shall not be responsible for obtaining permits or performing additional Work as may be required for remediation of the Property, as a result of existing conditions of the Property as may be identified in any Environmental Report, or for the remediation of development impediments not caused by Holiday's existing facilities or Holiday's use of the property. All the Work must be performed in compliance with governmental requirements. Permits for well abandonment must be obtained for SWFMD and permission for the relocations must be obtained from FDEP Water Permits Branch.

D. Payment of relocation related services set forth in the Work will be according to the payment schedule set forth in Exhibit H.

E. Sun will hereby grant to Holiday, its agents, contractors and subcontractors an easement on the Phase II portion of the Property as per the Declaration of Construction and Maintenance Easement Agreement herein identified as Exhibit D. Said Easement shall provide for location, access, and use of all water facilities of Holiday used and useful located on Sun Property after completion of the Work. All permanent pipe line easements shall be a non-exclusive easement 20 feet in width centered along the route of the installed water line(s). Once the Work specified in this Agreement is in place, Holiday will relinquish any claim of easement for the abandoned wells and abandoned pipe lines as shown on Exhibit F. Any pipe line abandoned and not removed

as a part of the Work, as instructed by Sun, shall become the property of Sun and all responsibility for or claim of ownership of Holiday shall terminate.

F. Landscape Buffer. Sun, or its successors, agrees to provide a landscape buffer, approved by Holiday, for the water treatment facility in the location referred to in Exhibit F. Sun will also provide means of roadway access to the water treatment facility which will be free of obstruction during Sun's development of the Property.

G. US Water agrees to complete the construction Work within 90 days from the Notice to Proceed issued for the construction work as provided in Paragraph C above. For every day which exceeds the 90 day construction period, US Water will pay a per day payment of \$500.00 to Sun which represents damages resulting from the Work not being completed on a timely basis.

H. Sun's Construction on Phase I. Sun will give Holiday at least seventy two (72) hours advanced written notice of the commencement of its development of the Property. Any damage to the Work performed by Holiday or US Water which is caused by Sun, its agents, contractors or subcontractors shall be repaired at Sun's expense. If Sun's development is halted for any reason after Sun directed US Water to move forward with the Work, Holiday and US Water's work shall continue with Work and it will be paid in accordance with the schedule of Exhibit H of this Agreement.

I. Mechanic's Lien. In the event any mechanic's or other liens, charge or order for payment of money is filed against the Property by contractors or subcontractors of Holiday, in connection with the Work, Holiday shall, at its expense, remove and satisfy such lien of record.

8. Indemnification. Holiday shall indemnify and hold harmless Sun, its successors and assigns from any and all claims, loss and damages to individuals or property created by Holiday, its contractors and subcontractors in the course of the Work. Any damage to Sun's property created by Holiday, its contractors and subcontractors during the Work shall be repaired at Holiday's expense as quickly as commercially reasonable. Sun shall indemnify Holiday, its Contractors and Subcontractors from any and all claims, loss and damages to individuals or property created by Sun, its Contractors and Subcontractors in the course of construction by Sun on the Property.

Promptly, and in any event within 20 days, after receipt by a party seeking indemnification hereunder (hereinafter referred to as the "Indemnitee") of notice of the commencement of any claim by a third party (whether by legal process or otherwise), against which the other party to this Agreement (hereinafter, the "Indemnitor") is, or may be, required under this Agreement to indemnify the Indemnitee, the Indemnitee will, if a claim may be made against the Indemnitor, notify the Indemnitor in writing of the commencement or assertion of the claim and give the Indemnitor a copy of such claim, process, and all legal pleadings. The Indemnitor shall have the right to participate in and assume the defense of the action with counsel of reputable standing reasonably acceptable to the Indemnitee. If the Indemnitor assumes the defense of any claim or

proceeding, the Indemnitee shall be authorized to consent to a settlement of, or the entry of any judgment arising from, any such claim or proceeding, without the prior written consent of the Indemnitee; provided, however, that (a) the Indemnitor shall pay all amounts arising out of such settlement or judgment concurrently with the effectiveness thereof; (b) the Indemnitor shall not be authorized to encumber any assets of the Indemnitee or to agree to any restriction that would apply to the Indemnitee or to its conduct of business; and (c) a condition to any such settlement shall be a complete release of the Indemnitee and its Affiliates, officers, employees, consultants and agents with respect to such claim. The Indemnitee shall be entitled to participate in (but not control) the defense of any such action, with its own counsel and at its own expense. If the Indemnitor does not assume the defense of any claim or proceeding and the Indemnitee is required by judgment or a settlement agreement to pay any amount in respect of any obligation or liability against which the Indemnitor has agreed to indemnify the Indemnitee under this Agreement, the Indemnitor shall pay to the Indemnitee such amount plus all reasonable expenses incurred by the Indemnitee (including legal fees and expenses at both trial and appellate levels, and including bankruptcy or insolvency proceedings). The Indemnitee shall not settle or compromise any claim, action, or proceeding without the prior written consent of the Indemnitor, which consent will not be unreasonably withheld, conditioned, or delayed. With respect to claims other than third-party claims, the Indemnitee shall promptly notify the Indemnitor of such claims, but the Indemnitee shall in any event be entitled to all of its rights and remedies hereunder.

The indemnification rights described in this Section 8 are in addition to, and not in derogation or limitation of, any statutory or common law right or remedy that any party may have as a result of a breach by any other party of a representation, warranty, or covenant set forth in this Agreement.

9. Dimmitt's Limit of Expense. It is contemplated that when Sun Automotive purchases the Property it will be subject to the terms of this Agreement and any expense related to the Work will be Sun's expense.

10. Conditions. (INTENTIONALLY DELETED SINC)

11. Additional Agreements. Subject to the terms and conditions of this Agreement, each of the parties shall use its reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper, or advisable under applicable legal requirements to consummate and make effective the transactions contemplated by this Agreement, including cooperating fully with the other parties.

12. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of Florida. The parties agree that any legal action relating to or arising out of this Agreement or the transactions contemplated hereby shall be brought in the courts of Pasco County, and that the courts of that county shall be the sole venue for such actions, and the parties waive any defense that Pasco County is an inconvenient or improper venue.

13. Successors and Assigns. A party shall not 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 Dimmitt may assign this Agreement to Sun Automotive and Holiday can assign their Agreement to the Florida Governmental Utility Authority or other governmental entity. All of the terms of this Agreement are binding upon and inure to the benefit of and are enforceable by and against the successors, legal representatives, and permitted assigns of the parties.

14. Entire Agreement. This Agreement, including the exhibits hereto, and the other documents delivered pursuant hereto, constitutes the full and entire understanding and agreement between the parties concerning the subject matter of this Agreement and supersedes all other prior agreements and negotiations, oral or written, concerning that subject matter, all of which are merged into this Agreement. Nothing herein, express or implied, is intended to confer upon any party, other than the parties hereto and their respective successors and permitted assigns, any rights, remedies, obligations, or liabilities under or by reason of this Agreement.

15. Amendment. A modification or amendment of this Agreement shall be effective only if it is in writing and executed by all the parties hereto, and by any other party to the document being amended.

16. Notices. To be effective, a notice or other communications required or permitted under this Agreement must be given in writing or by facsimile transmission (with a follow-up copy delivered by mail or courier). Unless otherwise specified herein a notice is considered effectively given when it is received by the intended recipient or when the intended recipient refuses delivery. If a notice is sent by certified or registered mail (with return receipt requested) or by a courier or delivery service, to the address of the intended recipient specified below (or such other address as the intended recipient has previously specified in a written notice received by the sender), the notice shall be presumed to have been received or refused by the intended recipient on the date indicated on the return receipt.

If to Holiday:

Gary Deremer
President
Holiday Utility Company
4939 Cross Bayou Blvd
New Port Richey, FL 34652

If to Dimmitt:

Mr. Richard Dimmitt, President
Dimmitt Cadillac, Inc.
25191 US Hwy. 19 North
Clearwater, FL 33760

and

Mr. Lawrence Dimmitt
Dimmitt Chevrolet, Inc.
25485 U. S. Highway 19 North
Clearwater, FL 33763

With a copy to:

Macfarlane Ferguson & McMullen
P.O. Box 1669
Clearwater, FL 33757
Attn: Emil C. Marquardt, Jr.

If to Sun Automotive:

Sun Automotive
3141 US Highway 19
Holiday, FL 34691

With a copy to:

Ken Misemer
5645 Nebraska Avenue
New Port Richey, FL 34652

If to US Water Services Corp:

David B. Schultz
US Water Services Corp.
4925 Cross Bayou Blvd.
New Port Richey, FL 34652

17. Titles and Subtitles. The titles of the sections and subsections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.


18. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

19. Delays or Omissions. No delay or omission by any party in exercising any right, power, or remedy upon any breach by any other party shall impair any such right, power, or remedy, nor shall it be construed to be a waiver of or acquiescence in any such breach or any similar or subsequent breach. To be effective, any waiver, permit, consent, or approval of any kind on the part of any party of any breach of this Agreement, or any waiver of any provisions or conditions of this Agreement, must be in writing. Unless otherwise specified herein, all remedies of a party for a breach of this Agreement are cumulative.

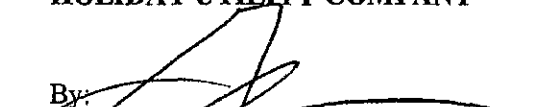
20. Attorney's Fees. Should any litigation or arbitration be commenced by any party concerning any provision of this Agreement or the rights and duties of any party, the prevailing party in such litigation shall be entitled, in addition to such other relief as may be granted, to reasonable Attorneys' Fees.

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


DIMMITT CAR LEASING, INC.

By: 
Title: U-P
Date: 6/13/08

HOLIDAY UTILITY COMPANY

By: 
Title: President
Date: 06-15-08

SUN AUTOMOTIVE, INC.

By: 
Title:
Date: 6-12-08

US WATER SERVICES CORP

By: David B. Schutt
Title: Sr. V. President
Date: 6/5/08

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