

FILED<sup>2</sup>

APR 02 2007

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

Missouri Public  
Service Commission

In the matter of the Application of )  
Folsom Ridge LLC and Big Island )  
Homeowners Water and Sewer Company, )  
Inc. for an order authorizing the transfer )  
and Assignment of Certain Water and )  
Sewer Assets to Big Island Water )  
Company and Big Island Sewer )  
Company, and in connection therewith )  
certain other related transactions. )

Case No. WD-2007-0277

Folsom  
Ridge Exhibit No. 20  
Case No(s) WC-2006-0088, et al  
Date 2-28-07 Rptr 45

**JOINT APPLICATION**  
**FOR APPROVAL OF TRANSFER OF ASSETS TO NONPROFIT**  
**COMPANIES ORGANIZED UNDER CHAPTER 393, RSMO**

Come now Folsom Ridge LLC and Big Island Homeowners Water and Sewer Association, Inc. (sometimes collectively referred to a "Applicants") in accordance with Section 393.190.1, 4 CSR 240-3.310 and 4 CSR 240-3.605, and for their application authorizing the transfer and assignment of assets to Big Island Water Company and Big Island Sewer Company (the 393 Companies), state the following to the Commission:

**APPLICANTS**

1. Folsom Ridge LLC (Folsom) is a limited liability company organized under the laws of the state of Colorado and authorized to engage in business in the state of Missouri. A copy of Folsom's Certificate of Authority to Transact Business in Missouri issued by the Missouri Secretary of State is attached as Exhibit 1. Folsom is generally engaged in the business of real estate development. It also owns certain assets used or useful in the provision of water and sewer service on Big Island, Lake of the Ozarks.

2. Big Island Homeowners Water and Sewer Association, Inc. (the Association) is a nonprofit homeowners association organized under the laws of the State of Missouri. A copy of

the Association's Certificate of Good Standing is attached as Exhibit 2. The Association is the operator and business administrator of the water and sewer systems on the Island. It joins in this application to the extent of its right, title and interest, if any, in the assets.

3. Approximately 60 customers are served by the water and sewer facilities subject to this application.

4. Neither applicant is a public utility under the laws of the State of Missouri. However, both are respondents in complaints filed before this Commission and pending in Case No. WC-2006-0082 (consolidated). Neither applicant has annual reports or assessment fees that are overdue.

5. Pleadings, notices, orders and other correspondence and communications concerning this Application should be addressed to the following:

Michael McDuffey  
840 Thunder Mountain Drive  
Camdenton, Missouri 65020  
Telephone: 573.346.2092

Mark W. Comley  
Newman, Comley and Ruth P.C.  
601 Monroe St., Suite 301  
P.O. Box 537  
Jefferson City, MO 65102  
573-634-2266 (Telephone)  
573-636-3306 (FAX)

Charles E. McElyea  
Phillips, McElyea, Carpenter & Welch, PC  
85 Court Circle  
P.O. Box 559  
Camdenton, MO 65020  
(573) 346-7231  
(573) 346-4411 FAX

Reggie Golden  
2602 Clover Basin Drive, Suite B,  
P.O. Box 54  
Longmont, CO 80502

### **THE TRANSACTION**

6. Subject to the terms and conditions of an Agreement For Sale And Transfer Of Water Distribution System And Wastewater System, an unexecuted copy of which is attached hereto as Appendix 1,<sup>1</sup> (the Purchase Agreement), Folsom and the Association will transfer and assign to the 393 Companies, and the 393 Companies will acquire from Folsom and the Association, all the assets used or useful by the applicants in offering and providing water and sewer service, all as more detailed in the Purchase Agreement. With the exception of certain connection fees applicable to identified lots on Big Island, Folsom will receive no payment by reason of this transaction. The members of the Association will receive no payment by reason of this transaction. Resolutions of the members of Folsom Ridge and the Board of Directors of the Association will be late filed as Exhibits 3 and 4.

### **NO DETRIMENT**

7. The proposed transfer and assignment and related transactions will not be detrimental to the public interest because they will not result in any reduced level of service or reliability for the customers being served by the systems currently. Those customers will see no interruption in their day to day utility services due to the transaction.

8. The operations of these systems are the subject of complaints pending in Case No. WC-2006-0082. The transactions contemplated by this application are designed to eliminate

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<sup>1</sup> This document is waiting execution by the parties and finalization of some exhibits, but applicants expect no material changes to the text of the agreement itself.

further disputes respecting the proper entity that provides and charges for water and sewer services. Resolve of those disputes is in the public interest.

9. The purchasers are nonprofit companies organized under select provisions of Chapter 393. Big Island Sewer Company was organized under and pursuant to the provisions of Sections 393.825 through 393.861 RSMo 2000 and Big Island Water Company was organized under and pursuant to the provisions of Sections 393.900 through 393.951 RSMo 2000. These companies have been created by local residents of Big Island and/or customers of the water and sewer services now provided by the Association. The 393 Companies shall be under the control of the local residents. Rates and conditions of service will be developed and administered by companies that are controlled by the customers they serve.

10. The 393 Companies have contracted with, or intend to contract with, Lake Ozark Water & Sewer LLC (LOWS) to provide operation, maintenance and other services pertaining to the water and sewer assets. LOWS has extensive experience in the operation and maintenance of systems this size and larger. LOWS is currently the contract operator for water and sewer systems under Commission receivership. LOWS is the current operator of the systems subject to the transfer contemplated in this application.

11. The transfer and assignment of these assets may have an impact on the tax revenues of the Missouri political subdivisions in which any structures, facilities or equipment involved are located, but the extent of that impact has not been quantified.

### **JURISDICTION**

12. As described below, Applicants believe that the Commission does not have jurisdiction over the proposed transaction. Therefore this application is contingent upon the Commission's exercise of jurisdiction. Applicants file their application for approval under

Section 393.190.1 RSMo 2000 out of an abundance of caution in case the Commission determines that the statute applies to their proposed transaction. Whether or not the Commission ultimately determines that it has jurisdiction over this transaction, Applicants request that such a decision be made promptly and if approval is necessary, that it be granted in an expedited fashion so that Applicants can complete their transaction in a timely fashion. Closing for the transaction is scheduled no later than March 31, 2007.

***Applicability of Section 393.190.1 RSMo***

13. Under Section 393.190.1 RSMo, no water corporation or sewer corporation may sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system to any other corporation without Commission approval. Neither of the applicants constitutes a water corporation or sewer corporation as defined in Section 386.020(49) and (59). As mentioned above, complaints have been filed alleging that the applicants are subject to regulation by this Commission but no findings to that effect have been made and the applicants assert that the complaints have no merit.

14. However, on January 11, 2007, the Commission entered an order in Case No. WC-2006-0082 lifting an earlier order which suspended proceedings. As part of the discussion in the Order, the Commission indicated probable jurisdiction as it noted the provisions of Section 393.190.1, RSMo 2000. The Commission raised the issue of this statute's applicability if the Commission finds favorably on the complaints. In the closing paragraph of that order, the Commission also observed that "[c]learly, the uncertainties surrounding this situation need to be resolved as soon as possible."

15. Like the Commission, the Applicants are anxious to end uncertainty about the manner in which sewer and water service is provided on Big Island, Lake of the Ozarks and the

authority of the entities providing that service. The Staff of the Commission has recommended this sale as a possible solution to the complaints filed in WC-2006-0082. Implementation of this solution on an expedited basis would serve to simplify the proceedings involving Big Island before this Commission, moot the complaints, and otherwise serve the public interest.

16. Applicants have filed this application specifically reserving their defenses to the complaints in WC-2006-0082 and reserving their rights to contest the Commission's jurisdiction over their operations or over proposed sale of their property. In the interest of time and efficiency, and to avoid the possibility that the transaction with the 393 Companies could be later held invalid, Applicants submit this application contingent upon the Commission's exercise of **limited or probable jurisdiction** for the singular purpose of reviewing and approving the proposed sale of assets to the 393 Companies.

WHEREFORE, Applicants respectfully request that the Commission issue its Order:

a. Determining that it lacks jurisdiction over the subject matter of the Application and dismissing the same.

If the Commission does not render the relief requested in section a., then Applicants respectfully request the Commission issue its Order:

b. Authorizing the Applicants to perform in accordance with the terms of the executed Purchase Agreement;

c. Authorizing the transfer and assignment of the identified water and sewer assets of the Applicants as more fully described in the executed Purchase Agreement;

d. Authorizing the Applicants to enter into, execute and perform in accordance with the terms of all other documents which may be reasonably necessary and incidental to the

performance of the transactions which are the subject of the executed Purchase Agreement and this Application; and

e. Granting such other relief as may be deemed necessary to accomplish the purposes of the Purchase Agreement and the Application and to consummate the transfer and assignment of the assets and related transactions pursuant to the executed Purchase Agreement.

Respectfully submitted,

/s/ Mark W. Comley

Mark W. Comley #28847  
Newman, Comley & Ruth P.C.  
601 Monroe Street, Suite 301  
P.O. Box 537  
Jefferson City, MO 65102  
(573) 634-2266  
(573) 636-3306 FAX

/s/ Charles E. McElyea

Charles E. McElyea #22118  
Phillips, McElyea, Carpenter & Welch, PC  
85 Court Circle  
P.O. Box 559  
Camdenton, MO 65020  
(573) 346-7231  
(573) 346-4411 FAX

ATTORNEYS FOR FOLSOM RIDGE AND BIG ISLAND  
HOMEOWNERS WATER AND SEWER ASSOCIATION,  
INC.

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent via e-mail on this 22<sup>nd</sup> day of January, 2007, to General Counsel's Office at [gencounsel@psc.mo.gov](mailto:gencounsel@psc.mo.gov); and Office of Public Counsel at [opcservice@ded.mo.gov](mailto:opcservice@ded.mo.gov) and via U.S. Mail, postage prepaid, to:

Cathy Orlor, 3252 Big Island Drive, Roach, MO 65787,  
Cindy Fortney, 3298 Big Island Drive, Roach, MO 65787,  
Dean Leon Fortney, P.O. Box 1017, Louisburg, KS 66053,  
Judy Kenter, 1794 Big Island Drive, Roach, MO 65787,  
Benjamin D. Pugh, 1780 Big Island Drive, Roach, MO 65787,  
Joseph J. Schrader, 1105 Yorktown Pl., DeLand, FL 32720,  
Stan Temares, 371 Andrews Trail Court, St. Peters, MO 63376,  
Ben F. Weir, 3515 SW Meyer Blvd., Blue Springs, MO 64015,

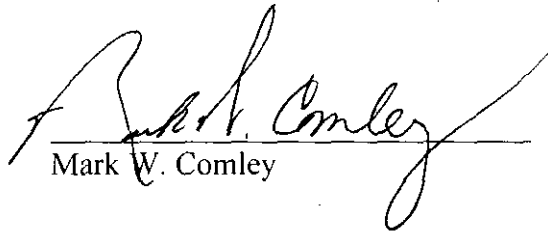
/s/ Mark W. Comley



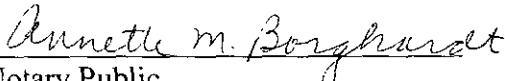
ATTORNEY VERIFICATION

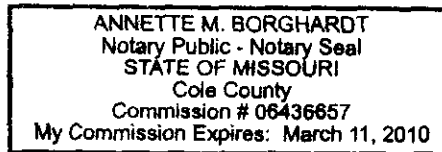
STATE OF MISSOURI     )  
                                  ) ss.  
COUNTY OF COLE       )

I, Mark W. Comley, being first duly sworn, do hereby certify, depose and state that I am an attorney for the Joint Applicants in this proceeding; that I have read the above and foregoing Joint Application for Approval of Transfer of Assets to Nonprofit Companies Organized under Chapter 393, RSMo and the allegations therein contained are true and correct to the best of my knowledge, information and belief; and I further state that I am authorized to verify the foregoing application by the above said joint applicants.

  
Mark W. Comley

Subscribed and sworn to before me, a Notary Public, this 23<sup>rd</sup> day of January, 2007.

  
Notary Public



# STATE OF MISSOURI



Robin Carnahan  
Secretary of State

CORPORATION DIVISION  
CERTIFICATE OF GOOD STANDING

I, ROBIN CARNAHAN, Secretary of the State of Missouri, do hereby certify that the records in my office and in my care and custody reveal that

**FOLSOM RIDGE, LLC**

using in Missouri the name

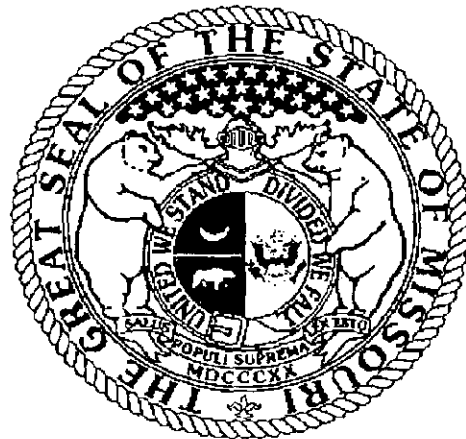
**FOLSOM RIDGE, LLC  
FL0019414**

a COLORADO entity was created under the laws of this State on the 30th day of April, 1998, and is in good standing, having fully complied with all requirements of this office.

IN TESTIMONY WHEREOF, I have set my hand and imprinted the GREAT SEAL of the State of Missouri, on this, the 23rd day of January, 2007

A handwritten signature in cursive script that reads "Robin Carnahan".

Secretary of State



Certification Number: 9354751-1    Reference:  
Verify this certificate online at <http://www.sos.mo.gov/businessentity/verification>

# STATE OF MISSOURI



Robin Carnahan  
Secretary of State

CORPORATION DIVISION  
CERTIFICATE OF GOOD STANDING

I, ROBIN CARNAHAN, Secretary of the State of Missouri, do hereby certify that the records in my office and in my care and custody reveal that

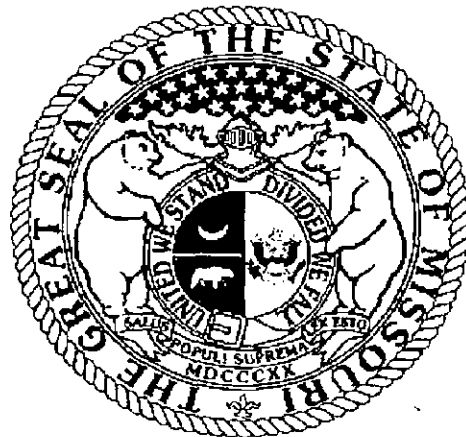
**BIG ISLAND HOMEOWNERS WATER AND SEWER ASSOCIATION, INC.**  
**N00059344**

was created under the laws of this State on the 16th day of July, 1998, and is in good standing, having fully complied with all requirements of this office.

IN TESTIMONY WHEREOF, I have set my hand and imprinted the GREAT SEAL of the State of Missouri, on this, the 23rd day of January, 2007

A handwritten signature of Robin Carnahan in cursive script.

Secretary of State



Certification Number: 9354752-1    Reference:  
Verify this certificate online at <http://www.sos.mo.gov/businessentity/verification>

**APPENDIX 1**

**AGREEMENT FOR SALE AND TRANSFER OF  
WATER DISTRIBUTION SYSTEM AND WASTEWATER SYSTEM**

**AGREEMENT FOR SALE AND TRANSFER  
OF WATER DISTRIBUTION SYSTEM AND  
WASTEWATER SYSTEM**

This AGREEMENT entered on this \_\_\_\_ day of November, 2006 by and between **FOLSOM RIDGE, L.L.C. ("FOLSOM")**, a limited liability company organized under the laws of the state of Colorado, Missouri, **BIG ISLAND HOMEOWNERS WATER AND SEWER ASSOCIATION, INC. ("ASSOCIATION")**, a Missouri nonprofit corporation (hereinafter referred to collectively as "**Seller**"), **BIG ISLAND SEWER COMPANY**, a Missouri nonprofit sewer corporation ("**BI SEWER**"), and **BIG ISLAND WATER COMPANY**, a Missouri nonprofit water corporation ("**BI WATER**"), (hereinafter collectively referred to as "**Buyer**");

WITNESSETH:

WHEREAS, **FOLSOM** and the **ASSOCIATION** are collectively the owner of installed and operational wastewater collection and transmission lines, associated pumping stations and treatment plant(s) (the Big Island Wastewater System) and a potable water production and distribution system (the Big Island Water System) located in, within, on or proximate to that geographic feature of the Lake of the Ozarks popularly known as Big Island, Camden County, Missouri; and

WHEREAS, **FOLSOM** is the owner of the real property on which the wastewater collection plant has been constructed and the water well and holding tanks have been constructed; and

WHEREAS, **Buyer(s)** are Missouri corporations formed for the purposes of offering water and sewer service to the residents of Big Island and specifically within a specified Service Area described in the Bylaws of each and attached hereto as Exhibit A; and

WHEREAS, **SELLER** desires to sell and transfer all of its business, right, title and interest in the Big Island Wastewater System and Big Island Water System Assets as described herein; and

WHEREAS, **Buyers** desire to purchase the Big Island Wastewater System and Big Island Water System Assets and any other assets of Seller associated with the those assets, and assume total operation, maintenance and control thereof as part of provision of safe and adequate services to the residents of Big Island;

NOW, THEREFORE, it is mutually agreed that:

1. Sale of the Big Island Wastewater System and Big Island Water System Assets.

The Seller agrees that on the closing date, the Seller shall sell, transfer, assign and deliver to Buyers, in the manner provided below, for the consideration hereinafter provided, all of Seller's right, title and interest in the existing assets accounts, warranties and business, including real estate and easements, pertaining to the provision of wastewater collection and treatment, and water production and distribution respectively located in, within, on or proximate to Big Island and related properties, as a going concern, including, without limitation, the following:

A. *Wastewater Assets.* The Wastewater Assets shall include any and all of Seller's trunk or wastewater collection lines, as built drawings, metering devices, pumps of any kind or description, lift stations, pipes or lines (buried or otherwise), treatment plants or basins and any appurtenant equipment and material, which are used or useful in the collection, transportation, delivery and treatment of wastewater in or for the Big Island Service Area;

B. *Water Distribution Assets.* The Water Distribution Assets shall include Seller's water wells, water treatment facilities, metering devices, pumps of any kind or description, storage or retention basins, pipes or lines (buried or otherwise), as built drawings and any appurtenant equipment and material, which are located in, or are used or useful in the provision, delivery and distribution of water in, to or for the Big Island Service Area;

C. *Accounts.* Accounts shall include all accounts payable, accounts receivable, tap or connection fees or accounts created for such fees, reserve accounts, equipment, material, supplies, inventory or other property, used or useful in Sellers' collection, transportation and treatment of wastewater or delivery and distribution of potable water. An itemization of said accounts and equipment is attached to this agreement and identified as Exhibit B. Prior to the execution of this Agreement, Seller agrees to provide Buyer with an itemization of Seller's expenses for the last 3 years with regard to the annual operating and maintenance expenses of the water and wastewater systems, including but not limited to: electrical bills, insurance premiums, testing, manager fees, maintenance calls, repairs, troubleshooting, etc.;

D. *Real Estate and Easements.* The real estate described in the warranty deed attached as Exhibit C on which the wastewater collection plant has been constructed and the water well and holding tanks have been constructed, in addition to easements, right-of-ways, and other present interests in real property acquired by Seller and used or useful in Sellers' collection, transportation and treatment of wastewater or delivery and distribution of potable water (sometimes collectively referred to hereinafter as "the Assets");

E. *Guarantees and Warranties.* For any Asset erected or installed within sixty (60) days of the Closing Date, Seller agrees to utilize its best efforts to persuade Seller's general contractor, who installed the water and sewer systems, to provide Buyers with a written guarantee or warranty of contractor's work for a period of one year from the date of installation. Furthermore, Seller agrees that Seller shall to the best of its ability name Buyers as third-party beneficiary on any and all guarantees or warranties which Seller may later obtain from the contractors and suppliers retained or used by Seller to install and equip the

Assets. Neither the final payment by the Buyer nor the final acceptance by the Buyer shall relieve Seller's retained independent contractors or suppliers from responsibility for correcting any defect covered by the guarantees and warranties assigned or obtained pursuant to this paragraph.

F. With the exception of any real estate transferred under this Agreement, Seller MAKES NO WARRANTIES, EXPRESS OR IMPLIED, with respect to the assets sold under this Agreement. The assets sold under this agreement are sold "AS IS" and "WITH ALL FAULTS."

## 2. Conveyances of Real Estate

The real estate to be conveyed by Seller will include the real property on which the wastewater treatment plant and the water well and holding tanks are located. FOLSOM shall retain an easement to said real property. In addition, Seller shall convey to Buyers an easement upon all real property owned by FOLSOM and upon which water and wastewater mains have been constructed. Said easement shall encompass enough land to allow for access and necessary repairs and maintenance. The real estate will be conveyed by general warranty deed(s), the specimen for which is attached as Exhibit C, and will vest marketable title in fact in the Buyers as their interests are divided. Easements shall be assigned by a written assignment, the specimen for which is attached as Exhibit D.

### A. *Title Insurance*

Seller shall within fifteen (15) days hereof deliver to Buyer a commitment to issue an owner's policy of title insurance naming Buyer as the insured, written by a title insurance company licensed in Missouri under the provisions of Chapter 381, Missouri Revised Statutes, which policy shall insure the Seller's title to be in the condition called for



by this contract, and which commitment shall provide that said policy shall be issued forthwith after the Seller's General Warranty deed shall be recorded. After delivery of said title insurance commitment, Buyer shall have fifteen (15) days to examine said title insurance commitment and notify Seller in writing of any objections thereto. If there be any objections, Seller shall within a reasonable time furnish to Buyer a new or amended title insurance commitment satisfying any such objections, but if such commitment shall not be furnished within ten (10) days after said notice, Buyer at its election may avoid this contract by written notice to Seller prior to the furnishing of such commitment. If the failure to furnish a title insurance commitment is due to the fact that title defects cannot be corrected, then this contract shall be void, unless Buyer gives notice to Seller in writing of its election to waive such defects, and if Seller was in actual good faith Seller shall not be liable to Buyer for any damages. Seller shall pay all costs for the issuance of the title insurance commitment. Buyer shall pay for the issuance of the policy.

3. Consideration.

In exchange for the Assets and Seller's promises and covenants herein:

A. *Tap Fees.* Buyers agree to remit to **FOLSOM** a tap fee when the persons identified on Exhibit E attached hereto or their successors in title connect to either or both of the systems. **BI SEWER** shall pay to **FOLSOM** a tap fee charge of \$4,800.00 for sewer service and **BI WATER** shall pay to **FOLSOM** a tap fee charge of \$2,000.00 for water service. It shall be Buyer's responsibility to collect a tap fee from the customer identified on Exhibit E in an amount sufficient to include the fee payable to **FOLSOM**. **FOLSOM** acknowledges that the Bylaws of BI Water provide for the return of a \$2,000.00 tap fee to eligible

customers who exercise a refund option. **FOLSOM** agrees to pay the tap fee refund to any person who exercises that option and who was not connected to the water distribution system on the Closing Date. However, should that property owner or his successor in interest, repurchase a water tap at a later date, Seller **FOLSOM** shall be entitled to a \$2,000.00 tap fee charge. Buyer's obligation to pay the indicated tap fees to **FOLSOM** shall expire ten (10) years after the Closing Date.

B. *Cooperation in Continued Development of Big Island.* Buyers acknowledge that **FOLSOM** is the title owner of the property described on Exhibit F (the "**FOLSOM** Parcels"). Buyers further acknowledge that **FOLSOM** is continuing active development of the **FOLSOM** Parcels. As those Parcels are developed, **FOLSOM** anticipates that it will be required by law to appear before local planning and zoning authorities, file requests and seek approvals from agencies of the state or federal government having jurisdiction over the permitting of wells, water distribution lines, wastewater transmission and collection lines, and wastewater treatment facilities; or appear before local governmental authorities in connection with construction and completion of dwelling units and related appurtenant facilities of the development. In exchange for the Assets transferred pursuant to this agreement, and **FOLSOM**'s promises and agreements herein, Buyers, for themselves their officers, directors, agents and employees, do hereby covenant and agree that they shall remain neutral with regard to any requests or applications **FOLSOM** may file for authority, permits, local zoning approval or any other form of federal, state, county, municipal or local authority or approval in connection with the development of the **FOLSOM** Parcels. Nothing in this section shall be construed to prohibit Buyers from 1) providing information about the Assets at the request of any governmental entity; or 2) cooperating with **FOLSOM** in

supplying any governmental entity with information about the Assets; their condition, capacity or maintenance, in connection with the development of the **FOLSOM** Parcels. Notwithstanding the foregoing, nothing in this agreement shall prevent any resident within the Big Island Service Area (Exhibit A) from voicing their objections, beliefs or opinions before any governmental entity on any issue that may affect that person in his or her capacity as a resident or property owner on Big Island

C. *Extensions of the Big Island Wastewater System and Big Island Water System.*

For purposes of **FOLSOM**'s continued development of the **FOLSOM** Parcels, improvements and extensions to both the Big Island Wastewater System and Big Island Water System will be required. The parties agree that mutual benefits would accrue from **FOLSOM**'s direct participation in the improvement and extension of the respective systems as the **FOLSOM** Parcels are progressively developed. For future improvements and extensions of the Big Island Wastewater System and Big Island Water System the parties have adopted a form of extension or improvement agreement the specimen for which (the specimen has been designed for a water main extension) is attached as Exhibit G. Until the **FOLSOM** Parcels are fully developed, Buyers agree that extensions or improvements to the respective systems on Big Island shall be constructed by **FOLSOM**, or its authorized contractors, pursuant to the Buyers' Bylaws, to the extent they may apply to the construction of the extensions or improvements, and the terms of Exhibit G, or pursuant to an agreement substantially similar to Exhibit G. For purposes of this section, the terms "fully developed" shall mean when all residences or other structures are erected in accordance with **FOLSOM**'s development plans for Big Island as they exist now or as they may be approved in the future by local land use authorities.

D. *Provisions to Survive Closing.* It is the parties' intention and agreement that their promises and agreements in Subparagraphs A. B. and C. of this section shall survive the closing.

E. *No Other Compensation.* Except as set forth in the preceding subsections, Seller shall be entitled to no other compensation for the Assets

F. *Buyers to Provide Service.* As of the Closing Date, Buyers shall offer and provide sewer service and water service respectively to persons or entities then and subsequently connected to the Big Island Wastewater System and Big Island Water System, and any extensions or improvements thereto in accordance with this Agreement, Buyers' duly enacted bylaws, rules, regulations and rates for service, as amended from time to time.

G. *Buyers to Assume Ownership.* On the date of closing, Buyer shall accept and assume ownership and title to the conveyed Assets and Buyer shall assume full liability, and become responsible, for all obligations in connection with such Assets, except for those liabilities and obligations which Seller has hereinunder agreed to retain, if any.

4. Regulatory and Other Approvals.

A. *State and Federal Approvals.* The parties acknowledge and agree that the duties and responsibilities set forth herein are conditioned upon approval of the United States Environmental Protection Agency (EPA) and Missouri Department of Natural Resources (DNR) respecting the transfer of, or Buyer's procurement of, any discharge or other permits necessary to operate the business.

B. *Membership Approval.* The parties acknowledge and agree that if required by the ASSOCIATION's Articles of Incorporation, bylaws or otherwise, the duties and responsibilities set forth herein are conditioned upon the ASSOCIATION's acquisition of the

approval of the required majority of the Association's membership

C. *Missouri Public Service Commission Approval.* The parties acknowledge and agree that should the Missouri Public Service Commission assert authority over the transfer, the duties and responsibilities set forth herein are conditioned upon Commission approval of the transfer.

C. *Failure To Obtain Approvals.* In the event the parties do not acquire the approvals and authority described in this section, this agreement shall be null and void and have absolutely no force or effect. The parties agree to that they shall act diligently and cooperate with each other in connection with any authority or approvals each may require for purposes of closing; particularly in connection with any efforts by Buyers to obtain proper EPA or DNR permits, either by application or by transfer from Seller, for lawful operation of the Assets. Seller and Buyers further agree to execute any and all other documents or applications necessary to effect said transfer of permits or other authority.

5. Closing.

A. Date of Closing.

Closing on the sale of the Assets sold under this agreement shall take place within thirty (30) days after all approvals and authority referred to in Section 4 of this Agreement have been obtained but no later than March 31, 2007 (the Closing Date). Closing shall be held at the offices of Central Bank of the Lake of the Ozarks, Osage Beach, Missouri at 10:00 a.m. or at such other time and place as the parties hereto may mutually agree.

B. Responsibilities Prior to Closing.

- i) **FOLSOM** and Seller's Contractor shall perform a walk through with Buyer's Directors for the purpose of providing information and answering questions

about the assets being conveyed.

- ii) Seller shall remove all trash and debris, including any styrofoam, encapsulated foam and discarded piping from the real estate to be transferred herein on which the wastewater treatment plant, water well and storage tanks are located.
- iii) Prior to Closing, Seller shall inspect and insure all underground valves and valve covers are properly labeled. Any obsolete valves shall be removed or, at Seller's option, shall be covered in a manner that will identify which valves are obsolete and which are active.

C. Responsibilities at Closing.

At the closing, the Seller shall deliver to the Buyers such deeds, bills of sale, endorsements, as built drawings, assignments and other sufficient instruments of transfer and conveyance as shall be effective to vest in the Buyers such title to the Assets to be sold as provided in this agreement. From time to time, at Buyer's request, whether at or after the closing and without further consideration, the Seller will execute and deliver such other instruments of conveyance and transfer and take such other action as the affected Buyer reasonably may require consistent with the terms of this Agreement to more effectively convey and transfer to the Buyer any of the assets to be sold hereunder, and will assist the Buyer in the collection or reduction to possession of such Assets. The Seller will pay all sales, transfer and documentary fees and taxes, if any, payable in connection with the sale, transfers and deliveries to be made to the Buyer hereunder.

6. Seller's Representations and Warranties.

The Seller represents and warrants as follows:

A. Seller Has Standing to Sell.

FOLSOM is an existing Colorado limited liability company, and the ASSOCIATION is an existing Missouri nonprofit corporation and both have the requisite power to sell and transfer the Assets pursuant to the terms of this agreement.<sup>1</sup>

B. Seller Has No Outstanding Liabilities Affecting the Transfer

Except for liabilities expressly assumed by Buyer in other sections of this Agreement, all liabilities or obligations of Seller, whether accrued, absolute, contingent or otherwise pertaining to or arising out of the operation of the Assets are paid in full or adequate reserves have been provided for the payment thereof, including:

- i. Local, state and federal tax liabilities due or to become due for any period prior to or ending on the date of closing or arising out of the transactions entered into, or any state of facts existing, prior thereto;
- ii. Liabilities or obligations which result from or are attributable, directly or indirectly, to the breach or failure to perform or the alleged breach or alleged failure to perform by the Seller of any agreement, contract, easement, lease, franchise agreement or understanding of any nature, whether oral or in writing, or arising, directly or indirectly, out of any state of facts existing prior to the date of closing;

C. Seller Has Marketable Title.

Seller has good and marketable title to all of the pipes, pumping equipment, storage towers/tanks, or retention basins, lift stations, treatment plants, equipment, fixtures and improvements making up the Big Island Wastewater System and Water Distribution System, and, to the best of Seller's knowledge, without active inquiry, good and merchantable title by conveyance, prescription or otherwise to its easements. Seller also owns all other assets to be sold under this agreement, in all cases free and clear of all liens, mortgages, pledges, leases, conditional sales agreements, encumbrances or other charges except liens for taxes not yet due or payable, easements or right of ways, streets, pipelines, electric transmission and distribution lines, telephone lines, drainage rights and other similar rights or restrictions of record which do not, either individually or in the aggregate, have a materially adverse effect on the value or utility of the Assets to be sold hereunder. Seller makes no warranty concerning the merchantability or status of the title of any real estate upon which the easements are located.

D. No Encumbrances on Assets being Conveyed.

Seller has entered into agreements, as more fully identified on the attached Exhibit H, which pertain to the Assets being conveyed. Seller expects said Agreements to be completed or concluded prior to closing. Seller agrees no financial liability inherent in said Agreements shall be transferred to Buyers at closing and agrees to transfer the Assets free of liens, leases, contracts or commitments with the exception of any guarantees or warranties of

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<sup>1</sup> With respect to the Association's authority however, see also section 4.B of this Agreement



benefit to Buyers.

E. No Violation or Breach.

The performance of this agreement by the Seller, including any preconditions or surviving warranties or representations, is not in violation of any laws, statutes, local ordinances, state or federal regulations, court orders or administrative order or ruling, nor is such performance in violation of any loan documents, conditions or restrictions in effect for financing, whether secured or unsecured<sup>2</sup>

7. Buyers' Representations and Warranties.

Buyer represents and warrants as follows:

A. Buyers Have Standing to Purchase.

Buyers are Missouri corporations, organized and existing under Chapter 393, RSMo and have authority and have all the requisite power to enter this agreement and purchase the Big Island Wastewater System and Water Distribution System and related assets pursuant to the terms of this agreement.

B. Authority.

The execution and delivery of this agreement by Buyers and the purchase of the Assets as contemplated hereby have been duly authorized by the Buyers, and all necessary action on the part of the Buyers has been taken to authorize the execution and delivery of this agreement and to consummate the sale contemplated hereby.

8. Conditions Precedent.

A. Buyers are Obligated to Close If Following Conditions are Satisfied.

Buyers' are obligated to Close on or before March 31, 2007 provided each of the

following conditions have been fulfilled:

i. Regulatory Approval.

All EPA and DNR permits necessary for operation of the Assets as an ongoing business shall have been obtained by Buyers.

ii. Representations and Warranties Remain True at Closing.

The Seller's representations and warranties contained in this agreement shall be true at the time of closing as though such representations and warranties were made at such time.

iii. Performance

The Seller shall have performed and complied with all agreements and conditions required by this agreement to be performed or complied with by Seller prior to or at the closing.

iv. No Casualty.

The Big Island Wastewater System and Water Distribution System shall not have been adversely affected in any material way as a result of any accident or other casualty or act of God or the public enemy, or any judicial, administrative or governmental proceeding.

B. Sellers are Obligated to Close If Following Conditions are Satisfied:

Sellers are obligated to Close on or before March 31, 2007 provided each of the following conditions have been fulfilled:

i. Regulatory Approval.

All EPA and DNR permits necessary for operation of the Assets as an ongoing business shall have been obtained by Buyers.

ii. Representations and Warranties Remain True at Closing.

Buyers' representations and warranties contained in this Agreement shall be true at the time of closing as though such representations and warranties were made at such time.

iii. Association Membership Approval. If required by the ASSOCIATION's Articles of Incorporation, bylaws or otherwise, acquisition of the approval of the required majority of the membership thereof.

9. Indemnification of Buyer by Seller.

The Seller shall, and hereby agrees to indemnify and hold harmless the Buyers, at any time after the closing against and in respect of:

A. All liabilities or obligations of Seller, whether accrued, absolute, contingent or otherwise, and including all liabilities or obligations arising out of the transactions entered into, or any state of facts existing, prior to the date of closing, including, without limitation, such liabilities or obligations as are described in paragraph B of Section 6 hereof;

B. Any claim, damage or deficiency resulting from any misrepresentation, untrue warranty, breach of warranty, or nonfulfillment of any agreement on the part of Seller under this agreement or from any misrepresentation in or omission from any certificate or other instrument furnished or to be furnished to the Buyer under this agreement;

C. Any claim, liability, damage or obligation arising out of or attributable to, directly or indirectly, the storage or disposal of hazardous waste or hazardous materials prior to the date of closing;

D. Any loss, liability, damage or expense including reasonable fees and disbursements of counsel, which Buyers may suffer, sustain or become subject to as a

consequence of any breach of any provision of this Agreement by Sellers.

E. Any loss, liability, damages or expense, including any reasonable fees and disbursements of counsel, which the Buyers may suffer, sustain or become subject to with respect to the enforcement of any provision of this Agreement against Sellers.

F. All actions, suits, proceedings, demands, assessments, judgments, costs (including attorney's fees) and expenses incident to any of the foregoing;

G. Seller may defend and control the defense of any liability to any third person, which the Seller must indemnify and hold the Buyer harmless against, at its sole expense through its legal counsel, reasonably acceptable to the Buyer, provided that the Buyer shall also be entitled to be represented in connection therewith by its legal counsel at its sole expense. The Buyer will not voluntarily pay or consent to the payment of any such liability or obligation without the consent of the Seller which consent shall not be unreasonably withheld. The Buyer shall notify the Seller with respect to any claim, demand, action or suit with respect to any of the foregoing; however, the failure by the Buyer to notify the Seller of any such liability or obligation shall not vitiate the obligation of Seller to indemnify except to the extent that such failure materially and adversely prejudices the defense of such liability or obligation.

#### 10. Indemnification of Seller by Buyers

The Buyers shall, and hereby agree to indemnify and hold harmless the Seller, at any time after the closing against and in respect of:

A. Any loss, liability, damage or expense including reasonable fees and disbursements of counsel, which Seller may suffer, sustain or become subject to as a consequence of any breach of any provision of this Agreement by Buyers.

B. Any loss, liability, damage or expense, including any reasonable fees and disbursements of counsel, which Seller may suffer, sustain or become subject to arising out of the Buyers' use of the acquired Assets subsequent to the Closing.

C. Any loss, liability, damages or expense, including any reasonable fees and disbursements of counsel, which the Seller may suffer, sustain or become subject to with respect to the enforcement of any provision of this Agreement against the Buyers

D. Buyer(s) may defend and control the defense of any liability to any third person, which the Buyer(s) must indemnify and hold the Seller harmless against, at its sole expense through its legal counsel, reasonably acceptable to the Seller, provided that the Seller shall also be entitled to be represented in connection therewith by its legal counsel at its sole expense. The Seller will not voluntarily pay or consent to the payment of any such liability or obligation without the consent of the Buyer(s) which consent shall not be unreasonably withheld. The Seller shall notify the Buyer(s) with respect to any claim, demand, action or suit with respect to any of the foregoing; however, the failure by the Seller to notify the Buyer(s) of any such liability or obligation shall not vitiate the obligation of Buyer(s) to indemnify except to the extent that such failure materially and adversely prejudices the defense of such liability or obligation.

11. Fees and Commissions.

Each party represents that it has not retained any broker or finder and is not paying, and is not obligated to pay, any finder's fee in connection with the transactions contemplated by this agreement.

Each party shall pay its own fees for attorneys, accountants, appraisers or others engaged by it in the course of negotiating or executing this agreement and in closing and completing the transactions hereunder provided.

12. Survival of Representations.

All statements contained in any certificate or other instrument delivered Buyers on behalf of Seller pursuant hereto, or in connection with the transactions contemplated hereby, shall be deemed representations and warranties by the Seller. All representations, warranties and agreements made by the Seller in this agreement, or pursuant hereto, shall survive the closing.

13. Benefit.

All of the terms of this agreement shall be binding upon, and inure to the benefit of, and be enforceable by, the respective legal representatives, and the successors and assigns of the Seller and Buyer.

14. Construction.

This agreement is being delivered and is intended to be performed in the State of Missouri, and shall be construed and enforced in accordance with the laws of such state.

15. Use of the Singular and Plural.

For the purposes of this Agreement, use of the plural form of a word includes the singular and use of the singular form of a word includes the plural unless the context indicates otherwise.

16. Entire Agreement.

This Agreement, together with the Exhibits hereto is the full and complete understanding between all of the parties and supersedes any and all prior or contemporaneous oral or written understandings or agreements. Any modification of this Agreement or additional obligation assumed by any party in connection with this Agreement shall be binding only if evidenced in a writing signed by each party or an authorized representative of each party

17. Counterparts.

This agreement may be executed simultaneously in one or more counterparts, each of which

shall be deemed an original, but all of which shall constitute one and the same instrument. This agreement shall not be binding until executed by all parties.

IN WITNESS WHEREOF, the parties have duly executed this agreement as of the day and year first above written.

**FOLSOM RIDGE, L.L.C..**

By: \_\_\_\_\_

**BIG ISLAND HOMEOWNERS WATER AND  
SEWER ASSOCIATION, INC.**

By: \_\_\_\_\_

**SELLER**

**BIG ISLAND SEWER COMPANY**

By: \_\_\_\_\_

**BIG ISLAND WATER COMPANY**

By: \_\_\_\_\_

**BUYERS**

## **Exhibit A - Service Area**

Page 1 of 3 Pages

### **LEGAL DESCRIPTION**

ALL OF THAT PROPERTY LOCATED IN SECTIONS 1 AND 12, TOWNSHIP 38 NORTH, RANGE 18 WEST, AND SECTION 6, TOWNSHIP 38 NORTH, RANGE 17 WEST AND SECTION 31, TOWNSHIP 39 NORTH, RANGE 17 WEST, CAMDEN COUNTY, MISSOURI LYING ABOVE CONTOUR ELEVATION 662 FEET MORE PARTICULARLY DESCRIBED AS FOLLOWS:

#### **PORTAGE PARK SUBDIVISION UNIT ONE**

PART OF THE SOUTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER SECTION 1, TOWNSHIP 38 NORTH, RANGE 18 WEST AND PART OF THE NORTHWEST ONE QUARTER OF THE NORTHEAST ONE QUARTER AND PART OF THE NORTHEAST ONE QUARTER OF THE NORTHWEST ONE QUARTER OF SECTION 12, TOWNSHIP 38 NORTH, RANGE 18 WEST, CAMDEN COUNTY, MISSOURI, LYING ABOVE CONTOUR ELEVATION 662 FEET. AS SHOWN ON THE PLAT OF PORTAGE PARK SUBDIVISION, UNIT ONE, RECORDED SEPTEMBER 9, 1947 IN BOOK 5, PAGE 48 OF THE CAMDEN COUNTY RECORDS.

#### **PORTAGE PARK SUBDIVISION UNIT THREE**

PART OF THE SOUTHEAST ONE-QUARTER AND THE NORTHEAST ONE QUARTER OF SECTION 1, TOWNSHIP 38 NORTH, RANGE 18 WEST, CAMDEN COUNTY, MISSOURI, LYING ABOVE CONTOUR ELEVATION 662 FEET. AS SHOWN ON THE PLAT OF PORTAGE PARK UNIT THREE, RECORDED FEBRUARY 16, 1961 IN BOOK 7, PAGE 9 OF THE CAMDEN COUNTY RECORDS.

#### **BIG ISLAND LAKE SITES**

PART OF LOTS 1 AND 2 OF THE SOUTHWEST ONE-QUARTER OF SECTION 6, TOWNSHIP 38 NORTH, RANGE 17 WEST, CAMDEN COUNTY, MISSOURI, LYING ABOVE CONTOUR ELEVATION 662 FEET. AS SHOWN ON THE PLAT OF BIG ISLAND LAKE SITES, RECORDED MAY 24, 1960 IN BOOK 6, PAGE 32 OF THE CAMDEN COUNTY RECORDS.

#### **AMENDED PLAT OF BIG ISLAND LAKE SITES FIRST ADDITION**

PART OF THE NORTH  $\frac{1}{4}$  OF LOT 1 OF THE SOUTHWEST  $\frac{1}{4}$  AND PART OF THE EAST  $\frac{1}{4}$  OF LOT 1 OF THE NORTHWEST AND PART OF LOT 2 OF THE NORTHWEST  $\frac{1}{4}$  ALL IN SECTION 6, TOWNSHIP 38 NORTH, RANGE 17 WEST, ALSO PART OF THE SOUTH  $\frac{1}{4}$  OF LOTS 1 AND 2 OF THE SOUTHWEST  $\frac{1}{4}$  OF SECTION 31 RANGE 39 NORTH, RANGE 17 WEST ALL IN CAMDEN COUNTY, MISSOURI, LYING ABOVE



CONTOUR ELEVATION 662 FEET. AS SHOWN ON THE AMENDED PLAT OF BIG ISLAND LAKE SITES, FIRST ADDITION, RECORDED NOVEMBER 6, 1965 IN BOOK 10, PAGE 19 OF THE CAMDEN COUNTY RECORDS.

**BIG ISLAND CENTRAL**

PART OF SECTION 6, TOWNSHIP 38 NORTH, RANGE 17 WEST, AND SECTION 1, TOWNSHIP 38 NORTH, RANGE 18 WEST, CAMDEN COUNTY, MISSOURI, LYING ABOVE CONTOUR ELEVATION 662 FEET. AS SHOWN ON THE PLAT OF BIG ISLAND CENTRAL, RECORDED MAY 24 2004, 2004 IN BOOK 84, PAGES A - U, OF THE CAMDEN COUNTY RECORDS.

**BIG ISLAND WEST**

PART OF SECTION 6, TOWNSHIP 38 NORTH, RANGE 17 WEST, AND PART OF SECTION 1, TOWNSHIP 38 NORTH, RANGE 18 WEST, AND PART OF SECTION 31 RANGE 39 NORTH, RANGE 17 WEST CAMDEN COUNTY, MISSOURI, LYING ABOVE CONTOUR ELEVATION 662 FEET. AS SHOWN ON THE PLAT OF BIG ISLAND WEST, RECORDED OCTOBER 1, 2001, IN BOOK 72, PAGE 9, OF THE CAMDEN COUNTY RECORDS.

**BIG ISLAND PUD FIRST FILING**

PART OF SECTION 6, TOWNSHIP 38 NORTH, RANGE 17 WEST, AND PART OF SECTION 1, TOWNSHIP 38 NORTH, RANGE 18 WEST, CAMDEN COUNTY, MISSOURI, LYING ABOVE CONTOUR ELEVATION 662 FEET, AS SHOWN ON THE PLAT OF BIG ISLAND PUD FIRST FILING, AS RECORDED IN THE CAMDEN COUNTY RECORDS.

**ISLAND VIEW ESTATES**

THE MARINA TRACT AS SHOWN ON THE RECORDED PLAT OF ISLAND VIEW ESTATES, A SUBDIVISION OF RECORD IN CAMDEN COUNTY MISSOURI RECORDED ON APRIL 24, 2006 AT BOOK 98, PAGE 13 OF THE CAMDEN COUNTY RECORDS.

**REMAINDER OF THE PROPERTY**

ALL THAT PROPERTY LOCATED IN THE SOUTH EAST ONE QUARTER SECTION ONE TOWNSHIP 38 NORTH, RANGE 18 WEST, CAMDEN COUNTY, MISSOURI, LYING ABOVE CONTOUR ELEVATION 662 FEET AS SHOWN AS PROPOSED UNIT PORTAGE PARK ON THE PLAT OF PORTAGE PARK SUBDIVISION UNIT THREE, RECORDED FEBRUARY 16, 1961 IN BOOK 7, PAGE 9 OF THE CAMDEN COUNTY RECORDS AND LYING BETWEEN THE SUBDIVISION BOUNDARY OF PORTAGE

PARK SUBDIVISION UNIT ONE, A SUBDIVISION OF RECORD IN CAMDEN COUNTY MISSOURI, RECORDED SEPTEMBER 9, 1947 IN BOOK 5, PAGE 48 OF THE CAMDEN COUNTY RECORDS AND THE BOUNDARY OF PORTAGE PARK SUBDIVISION UNIT THREE, RECORDED FEBRUARY 16, 1961 IN BOOK 7, PAGE 9 OF THE CAMDEN COUNTY RECORDS;

AND PART OF SECTION 6, TOWNSHIP 38 NORTH, RANGE 17 WEST, AND PART OF SECTION 31 RANGE 39 NORTH, RANGE 17 WEST CAMDEN COUNTY, AND LYING INSIDE OF BIG ISLAND DRIVE, IN THE CENTER OF BIG ISLAND, LYING ABOVE CONTOUR ELEVATION 662 FEET, BETWEEN THE BOUNDARIES OF: BIG ISLAND WEST A SUBDIVISION OF RECORD IN CAMDEN COUNTY MISSOURI AS SHOWN ON THE PLAT OF BIG ISLAND WEST, RECORDED OCTOBER 1, 2001, IN BOOK 72, PAGE 9, OF THE CAMDEN COUNTY RECORDS; BIG ISLAND CENTRAL, A SUBDIVISION OF RECORD IN CAMDEN COUNTY MISSOURI, AS SHOWN ON THE PLAT OF BIG ISLAND CENTRAL, RECORDED MAY 24 2004, 2004 IN BOOK 84, PAGES A - U, OF THE CAMDEN COUNTY RECORDS; AND THE AMENDED PLAT OF BIG ISLAND LAKE SITES FIRST ADDITION, A SUBDIVISION OF RECORD IN CAMDEN COUNTY MISSOURI, AS SHOWN ON THE AMENDED PLAT OF BIG ISLAND LAKE SITES, FIRST ADDITION, RECORDED NOVEMBER 6, 1965 IN BOOK 10, PAGE 19 OF THE CAMDEN COUNTY RECORDS.

## **EXHIBIT B**

All sewer lines, collection system, treatment plant, pipes, manholes, machinery, pumps, screens, plumbing, aerators, equipment and appurtenances, and all other personal property, including as built drawings, comprising the central sewer collection and treatment system for Big Island Lake of the Ozarks and all additions thereto and located in Camden County, Missouri.

All water wells, well houses, water treatment facilities, pumps of any kind or description, casings, pipes, cleanouts, hydrants, valves, metering devices, pumps, storage or retention basins, and all additions thereto and located in Camden County, Missouri.

As described in further detail below :

[INSERT ITEMIZATION]

**EXHIBIT C**  
**SPECIMEN WARRANTY DEED**

**WARRANTY DEED BY CORPORATION**

**KNOW ALL MEN BY THESE PRESENTS**, That Folsom Ridge LLC , a limited liability company organized under the laws of the State of Colorado, and Big Island Homeowners Water and Sewer Association, Inc.. a corporation organized and existing under the laws of the State of Missouri, (herein collectively referred to for purposes of recording as "**Grantor**" whether one or more), party of the First Part, in consideration of TEN DOLLARS and other good and valuable consideration to be paid by Big Island Sewer Company, a Missouri nonprofit sewer company, and Big Island Water Company, a Missouri nonprofit water Company, ("**Grantees**"), Grantees' mailing address:

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of the County of Camden, in the State of Missouri, parties of the Second Part, the receipt of which is hereby acknowledged, and by virtue and in pursuance of proper resolutions of the Members or Board of Directors, whatever the case may be, of said party of the first part, do, by these presents, GRANT, BARGAIN, SELL, CONVEY AND CONFIRM unto the said parties of the second part, their successors, heirs and assigns, the following described lots, tracts or parcels of land lying, being and situate in the County of Camden and State of Missouri, to-wit:

[insert legal description from title commitment]

**TO HAVE AND TO HOLD** the premises aforesaid, with all and singular the rights, privileges, appurtenances and immunities thereto belonging or in anywise appertaining, unto the said parties of the Second Part and unto their heirs and assigns **FOREVER**. The said Party of the First

**IN WITNESS WHEREOF**, said party of the First Part has caused these presents to be signed by its (their) authorized members or officers, and properly attested and sealed this \_\_\_\_ day of \_\_\_\_\_, 2006.

By: \_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_, its President

Secretary

STATE OF MISSOURI )  
 ) ss.  
COUNTY OF )

On this \_\_\_\_ day of \_\_\_\_\_, 2006, before me personally appeared \*\*\*, to me personally known, who, being by me duly sworn, did say that he is President of Big Island Homeowners Water and Sewer Association, Inc; that the seal affixed to this instrument is the corporate seal of said corporation, and that the said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors.

And the said \*\*\*\*\* acknowledges said instrument to be the free act and deed of said Corporation.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and affixed my official seal at my office in \* the day and year first above written.

My term expires \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**EXHIBIT D  
SPECIMEN**

ASSIGNMENT OF EASEMENTS AND RIGHT-OF-WAY

This AGREEMENT entered on this \_\_\_\_ day of January, 2007 by and between **FOLSOM RIDGE LLC** and **BIG ISLAND HOMEOWNERS WATER AND SEWER ASSOCIATION, INC.**, (hereinafter referred to as "Assignor") and **BIG ISLAND SEWER COMPANY**, a Missouri nonprofit sewer corporation, and **BIG ISLAND WATER COMPANY**, a Missouri nonprofit water corporation, (hereinafter "Assignee"),

WITNESSETH:

WHEREAS, Assignor has heretofore constructed, maintained and/or operated a wastewater collection treatment system and potable water distribution system and appurtenances connected therewith within certain easements;

WHEREAS, Assignee, pursuant to an Agreement for the Sale and Transfer entered into by and between the parties hereto on or about \_\_\_\_\_, has agreed to purchase the wastewater collection treatment system and potable water distribution system, as defined in the Agreement, and other assets of Assignor and to operate and maintain the same and provide sewer and water service to all connected thereto

Now therefore, the parties agree as follows:

1. The Assignor, in consideration of the sum of \$1.00, receipt of which is hereby acknowledged, and for other good and valuable consideration, does hereby sell, assign, and transfer to the Assignee its successors and assigns, all its use, right to use, prescriptive or otherwise, easements in, and right-of-way within \_\_\_\_\_ Subdivision, (the Subdivision) a

subdivision of \_\_\_\_\_ County, Missouri, filed of record at Plat Book \_\_, Page \_\_,  
\_\_\_\_\_ County Recorder's Office, and any and all other easements, or other uses of land,  
connected, directly or indirectly, with the operation, maintenance of its wastewater collection and  
treatment system and potable water production and distribution system whether such easements are  
written, oral recorded or otherwise.

2. To have and to hold the same, with said appurtenances, to the Assignee, its successors  
and assigns, subject to all the conditions and stipulations expressed in said grants of easement to  
Assignor, so that neither the Assignor, its successors or assigns or any person or persons claiming  
title under the Assignor shall claim any right, title or interest in said grant or any part thereof, but that  
each of them shall be excluded and forever barred.

3. The Assignee in consideration of the foregoing accepts said assignment.

IN WITNESS WHEREOF, the parties have set their hands and seals.

**FOLSOM RIDGE LLC**

And

**BIG ISLAND HOMEOWNERS WATER AND SEWER  
ASSOCIATION, INC, INC.**

By: \_\_\_\_\_

ASSIGNOR



And

**BIG ISLAND WATER COMPANY**

By: \_\_\_\_\_

ASSIGNEE

**EXHIBIT E**  
**PROPERTIES SUBJECT TO TAP FEE**

**[PROPRIETARY]**

**EXHIBIT F  
FOLSOM PARCELS**

[attached]

**EXHIBIT G**  
**SPECIMEN EXTENSION AGREEMENT**  
**(WATER)**

**BIG ISLAND WATER COMPANY**  
**DEVELOPER EXTENSION AGREEMENT**

This **AGREEMENT** (this "Agreement") between **BIG ISLAND WATER COMPANY, INC.**, a Missouri nonprofit water corporation (hereinafter "**Company**") and **FOLSOM RIDGE LLC**, a limited liability company organized under the laws of the state of Colorado, (hereinafter referred to as "**Developer or Contractor**"), entered into and effective this \_\_\_\_ day of \_\_\_\_\_, 2007,

WITNESSETH

WHEREAS, the Developer and the Company have agreed that it is appropriate to improve and extend the existing water system that serves Big Island, Lake of the Ozarks, one of Developer's projects, for the purposes of extending water service to new subscribers for the Company and otherwise for the mutual benefit of both parties;

WHEREAS, the "Main Extension", as used herein, means the installation of extended water distribution lines as more fully described in Exhibit A, attached hereto and incorporated herein by reference and if the context does not clearly require otherwise, "Main Extension" shall have the meaning set forth in the Company's bylaws adopted on \_\_\_\_\_, 2006;

WHEREAS the Main Extension is to be constructed in accordance with technical specifications and drawings which the Developer shall cause to be completed, subject to review and approval by the Company, and will be routed as depicted on the attached plan or plat, referred to as Exhibit C, attached hereto and incorporated herein by reference; and

WHEREAS, the Developer is willing to construct the Main Extension upon the terms and conditions hereinafter set forth; and

WHEREAS, the Developer is willing to engineer, design, procure and construct the Main Extension and agrees to bear the cost thereof, and further agrees to convey and contribute the Main Extension to the Company free and clear of all liens and encumbrances upon completion of the Main Extension; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Developer to Construct Extension. The Developer agrees to construct the Main Extension upon the terms and conditions hereinafter set forth. The foregoing recitals are incorporated as if fully set forth herein.

2. Incorporation of Company Bylaws. To the extent applicable to the construction of the Main Extension, the Bylaws of the Company adopted on \_\_\_\_\_, 2006 are hereby incorporated by reference as if fully set forth herein. Any capitalized term defined in the Company Bylaws that is used in this Agreement shall have the meaning ascribed in the Company Bylaws. To the extent a Company Bylaw, rule or regulation differs from a provision in this Agreement, the terms of this Agreement shall control. This Agreement shall not be affected by any Company Bylaw revision, alteration or amendment adopted after the effective date of this Agreement.

3. Location. The Main Extension shall be installed only in utility easements granted to the Company, or in roads or streets which a city, county, State Highway Department, or other public agency has accepted for maintenance as a public right-of-way.

4. Easements.

Easements necessary to cover the Main Extension not located in public rights-of-way shall be granted at no cost to the Company upon such terms as the Company may reasonably require before construction of the Main Extension begins. The following minimum requirements shall be in effect in connection with all the grants:

A. Legal Description. Developer shall provide the Company with a legal description of all easement parcels to be granted by any single conveyance instrument, consisting of a printed legal description, certified by a land surveyor registered in the State of Missouri, and an accurate survey drawing of each parcel, including north arrow and scale, tying each parcel to a survey land corner or corner of a platted parcel of land.

B. Evidence of Title. The Developer shall provide the Company suitable evidence of title, consisting of a title insurance policy or commitment date within 30 days before the date of submission to the Company. Evidence of title must show all current mortgages and deeds of trust, liens, and other encumbrances against the property.

C. Subordination Agreement. The Company may require a properly executed and acknowledged subordination agreement for any easement or right-of-way parcel to exempt the same from the lien of any mortgage or deed of trust. If so required, the Company will not accept the Main Extension or other facilities for maintenance until it receives all required subordinations. The Company reserves the right to require additional or supplemental evidence of title when the subordination agreement is tendered to the Company for recording.

5. Right of Way Acquisition Costs.

The Developer shall pay all costs and expenses associated with the acquisition and

approval of all easements and rights-of-way necessitated thereby for the Main Extension. These expenses include, but are not necessarily limited to, the Company's actual out-of-pocket costs incurred in connection with the review and approval of such easements and right of way.

6. Condemnation.

For acquisition of right of way necessary for economical construction or installation of the Main Extension where negotiations with the owner of the right of way have failed for private acquisition of the same, the Company may, but is not required, to exercise its statutory rights of eminent domain in connection with the Main Extension. If the Company exercises its right of eminent domain pursuant to this paragraph, Developer agrees to reimburse Company for all costs associated therewith including court costs, attorneys fees and the compensation awarded to the land owner.

7. Design and Construction.

Developer shall, at its sole cost, design, construct, and install the Main Extension, including without limitation frontage extensions reasonably required by the Company. All such work shall be in conformity with the rules and regulations relating to the manner and methods of construction, maintenance and operation and as to safety prescribed by the Missouri Department of Natural Resources

8. Plan Review and Approval.

No construction of any Main Extension shall begin until after the plans and design therefor have been reviewed and approved by the Board and the Company's Engineer as conforming with Missouri Department of Natural Resources rules, regulations and standards and other applicable standards, and until after the Company has issued written notice that construction may begin. The Company shall not unreasonably withhold approval of the construction plans and design or its written notice to proceed with construction. If the Company has not approved or disapproved the plans and design for the Main Extension within thirty (30) days after submission to the Company or Company's Engineer, then approval shall not be required and the requirements of this section shall be deemed waived.

9. Construction Observation.

The Company shall be notified at least forty-eight (48) hours before construction is commenced, and at any and all other times specified by the Company, for inspection or testing in any plan approvals or otherwise.

10. Conditional Acceptance.

Upon completion of construction, Developer shall request the Company for a preliminary inspection of the Main Extension. The Main Extension will qualify for Conditional Acceptance

by the Company when all of the following conditions have been met:

A. Company Review. The Company has determined that the Main Extension has been constructed and connected to Company facilities in conformity with the approved plans, construction notes and specifications, has passed all necessary tests, and has been approved for use by the Missouri Department of Natural Resources.

B. Contractor Requirements. Contractor has tendered and the Company has approved the following:

(1) Record Drawings of the utility extension plan, photographically reduced to 1" = 100' scale on mylar drafting film, and certified compaction test results, if required;

(2) Key map pages consistent in form and content with current Company requirements as to key maps showing the location of all component parts of the Main Extension, or other arrangements approved in writing by the Company have been made for the preparation thereof;

(3) A 12-month maintenance bond, or other security approved by the Company, in an amount equal to ten percent (10%) of the costs of constructing the Main Extension, or such greater amount as may be reasonable determined by the Company on account of special circumstances of the particular Main Extension, or any portion thereof;

(4) A duly executed written statement that all suppliers of labor and materials have been fully paid, with lien waivers attached;

(5) A duly executed written assignment of all manufacturer's warranties on materials, if applicable;

(6) All subordination agreements and partial releases required pursuant to this Article; and

(7) Payment of all sums then due to the Company in connection with the Main Extension.

C. Approval: Tap Permits. Within thirty days (30) after Contractor submits the items identified in Subparagraph B of this section, the Company shall evaluate the request and give written notice to the Contractor of its action, stating any special conditions attached to the Conditional Acceptance, or the reasons for denial of the request, if applicable. No Taps or Service Connections to the Main Extension will be permitted, nor will the Company accept applications for such Taps, until the Company has given its Conditional Acceptance of the Main Extension as herein provided.

D. Effective Date. Conditional Acceptance shall be effective as of the date the Company executes the Conditional Acceptance form. As of such date, the Main Extension shall be deemed operational, and any Person may apply to the Company for Tap Permits to such Main. The Company's acceptance of the Main Extension, whether conditional or final, does not, however, guarantee that Taps will be available. Availability of Taps is governed at all times by the provisions of the Company Bylaws, rules and regulations and such availability is determined in accordance therewith at the

time proper application for service is made.

11. Maintenance and Repair.

Until Final Acceptance of the Main Extension, Contractor shall be solely responsible for all routine maintenance and for correction of any and all defects in the Main Extension, as set forth below:

A. Routine Maintenance. Contractor shall, at its sole cost, protect the Main Extension and perform all routine maintenance thereon so as to keep it in good repair and operating condition. Such obligations shall include the repair or replacement of any part or parts thereof damaged by Contractor as a result of street construction, paving, other utility installation or vehicular traffic. In addition, Contractor shall, at his sole cost, correct any soil subsidence or erosion which the Company determines occurred in connection with or as a result of construction of the Main Extension.

B. Cure of Defects and Deficiencies. Contractor shall, at his sole cost, correct, repair or replace any part or parts of the Main Extension which the Company reasonably determines were not constructed in conformity with the approved plans, construction notes or specifications, or which the Company determines to be defective, of poor or unworkmanlike quality, or otherwise not in conformity with any applicable warranty.

12. Acceptance for Maintenance (Final Acceptance).

A. Standard. Within thirty days after Conditional Acceptance of the Main Extension or any portion thereof, Contractor may request the Company to perform a final inspection and accept the Main Extension for maintenance. Upon such request, the Company shall inspect the Main Extension and shall accept the same for maintenance when all of the following conditions are met:

(1) Company Review. The Company determines that the Main Extension has been constructed and connected to Company facilities in conformity with the Bylaws, approved plans, construction notes and specifications, has passes all necessary tests and has been approved for use by all other governmental entities and agencies having jurisdiction.

(2) Maintenance and Repair. Contractor has fully performed all maintenance and repair obligations imposed upon it during the period of Conditional Acceptance.

(3) Owner Requirement. Contractor has tendered and the Company has approved all of the following:

(a) A verified statement of Actual Cost of the Main Extension, itemized as the Company may require;



(b) Any and all deeds, bills of sale, or other conveyance instruments necessary to vest title to all component parts of the Main Extension in the Company with warranties of title as provided in the Bylaws;

(c) All drawings, maps and construction notes pertaining to any changes in the Main Extension made during the period of Conditional Acceptance;

(d) Payment of all sums due to the Company from Contractor on account of the Main Extension; and

(e) Lien waivers in form acceptable to the Company by all Persons providing labor or materials and all contractors or others entitled to mechanics liens, against facilities and properties included in the Main extension.

(4) Effective Date. The Company's final acceptance of the Main Extension for maintenance shall be effective as of the date the Company executes a Final Acceptance form but shall not be later than sixty (60) days after Contractor's request for final inspection and acceptance of the Main Extension. As of such date, and in consideration of Company's agreement to operate and maintain the Main Extension at its expense on a going forward basis, all of Contractor's right, title and interest in and to the constructed Main Extension, shall immediately pass to and vest in the Company, free and clear of all liens and encumbrances, and Contractor shall warrant and defend conveyance of such Main Extension to the Company, its successors and assigns, against all and every Person or Persons whomsoever. Prior to or as of the date of Final Acceptance, the Company shall release and discharge all sureties issuing bonds in connection with the Main Extension. As of the date of Final Acceptance, the Company shall operate and maintain the Main Extension at its expense. Nothing contained herein, however, shall be construed to relieve Contractor from its warranty obligations herein or in any separate agreement.

13. General Construction Standards.

All excavations and other work on the Main Extension shall be performed in conformity with and is subject to the requirements and conditions set forth below.

A. Compliance. Contractor shall comply with the Technical Standards and Specifications, specific instructions from representatives of the Company, and those laws, ordinances, rules and regulations imposed by any governmental authorities having jurisdiction over the Water System.

B. Safety. It shall be Contractor's responsibility to determine, initiate, maintain and supervise all measures necessary to protect the public during construction.

C. Permits. The Contractor shall be solely responsible for obtaining any and

all permits required for the work from other governmental entities or agencies having jurisdiction over the Contractor's work.

D. Subsurface Structures. The Company shall make available to the Contractor Record Drawings showing the location of its facilities in the vicinity of the work, but the Contractor shall be finally and solely responsible for determining the existence and location of all subsurface structures in such area, and shall indemnify and hold the Company harmless against any and all claims for damages to any such structures.

E. Warranty. All materials and workmanship furnished by the Contractor shall conform to the provisions of the Technical Standards and Specifications and to all plans and designs approved by the Company, and shall be free from all defects due to faulty or non-conforming materials or workmanship.

F. Inspections. Inspections and testings will be performed by the Company's representative during normal weekday business hours. Whenever an inspection or testing is required by a specific provision of the Bylaws or by the terms of any permit or plan approval, the Contractor shall give the Company such notice as is required and shall not cover or otherwise obscure the work to be inspected until the inspection has been made. Work covered by the Contractor before Company inspection shall be uncovered at Company's request provided however, the Contractor may cover work if the Company or its authorized representative fails to inspect the work within 72 hours of the notice. If reasonably required by the Company, the Contractor shall uncover or otherwise make any of the work accessible for inspection when ordered to do so by the Company. After examination by the Company and any other persons designated by the Company, Developer shall restore the work to the standard required by the approved plans and design. If the work exposed or examined is not in conformance with the requirements of this Agreement, then uncovering, removing and restoring the work shall be at Developer's cost. If work exposed or examined under this Section is in conformance with the requirements of this Agreement, then Developer shall be entitled to reimbursement from the Company for the Developer's costs in uncovering, removing and restoring the work. Except as set out herein, the inspections, testing and reviews performed by the Company are for the sole and exclusive benefit of the Company and nothing herein contained shall create any right to damages against the Company, its Board of Directors, officers, agents or employees by reason of any inspections, testing, or reviews required or authorized by the Bylaws, or by reason of the issuance of any approval or Permit for any work subject to this Section.

G. Independent Investigation. Contractor shall thoroughly examine the work site to ascertain for himself all soil, geological, groundwater and other conditions to be encountered which might affect the work being undertaken. The Contractor shall enter into such work relying on his own investigation and information, and not on any statements or representations, if any, that have been made by the Company.

H. Indemnification. By undertaking any work subject to this Section,

Contractor agrees to indemnify and hold harmless the Company from any and all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with any work which is subject to the Bylaws if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of Contractor, or which arises out of any Worker's Compensation claim of any employee of or any other Person claiming through the Contractor. Contractor shall investigate, handle, respond to any and all claims, and provide defense for the Company at the sole expense of Contractor. The Contractor also shall bear all other costs and expense related thereto, including court costs and attorney fees, whether or not any such claims or demand alleged are groundless, false, or fraudulent.

I. Record Drawings. Upon completion of the work, Contractor shall submit to the Company Record Drawings and certified compaction test results relating to such work.

14. Insurance.

Contractor shall not commence work on the Main Extension until insurance as provided hereunder has been obtained and certificated evidencing the same have been issued by the respective insurance companies to the Company.

A. Scope of Coverage. Contractor shall procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability claims, demands, and other obligations assumed by Contractor pursuant to this Article. Contractor shall not be relieved of an liability, claims, demands, or other obligations assumed pursuant to this Article by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

B. Types of Coverage. Contractor shall procure and maintain, and shall cause all of its subcontractors to procure and maintain, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with policies and insurers acceptable to the Company. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by Contractor pursuant to this Article. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

(1) Worker's Compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this Article in such minimum amounts as required by law.

(2) General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and TWO

MILLION DOLLARS (\$2,000,000) aggregate. This policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including complete operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall include coverage for explosion, collapse, and underground hazards. The policy shall contain a severability of interests provision.

(3) Comprehensive Automobile Liability insurance with minimum combine single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) each occurrence and TWO MILLION DOLLARS (\$2,000,000) aggregate with respect to each of Contractor's owned, hired or non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision.

C. Miscellaneous. The policies shall be endorsed to include the Company and its officers and employees as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by the Company shall be excess and not contributory insurance to that provided by Contractor. Contractor shall be solely responsible for any deductible losses under any policy required above.

D. Enforcement. Failure on the part of Contractor to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute cause for issuance of a Stop Work Order hereunder. In addition, without waiving any other available remedy, the Company may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the Company shall be charged to and paid by Contractor.

15. Required Submittals.

The Contractor shall not begin any excavation or any other work on the Main Extension until the Contractor has obtained a Permit therefor, and has submitted, in addition to any other materials required elsewhere herein, the following, approved as to form by the Company:

A. Insurance Certificates. Certificates prepared by Contractor's insurance agent in a form satisfactory to the Company evidencing that policies providing the required coverages, conditions, and minimum limits are in full force and effect. The certificate shall identify the work being performed and shall provide that the coverages afforded under the policies shall not be canceled, terminated or materially changed until at least thirty (30) days' prior written notice has been given to the Company. The Company reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

16. Stop Work Orders.

The Company may revoke any Permit for work and issue a Stop Work Order upon a determination that the Contractor has violated or has failed to meet any condition of the approval, any provision of this Agreement or any other standard, specification, or rule imposed by the Company or a governmental entity having jurisdiction over the Water System. A Stop Work Order may be issued orally or in writing by the Manager or Company's Engineer, and shall take effect immediately upon the issuance thereof, and remain in full force and effect until rescinded in writing by the Company. When issued orally, it shall be confirmed in writing within three (3) business days. It is a violation of the terms of any Stop Work Order issued pursuant to this Section except such as may be permitted by the Company in order to render the construction site safe and secure.

17. Notice of Defects.

If the Company Engineer determines that any part of the work was not performed in conformity with this Agreement, or approved plans, or is defective, or poor or unworkmanlike quality, or otherwise not in conformity with any applicable warranty, the Company may give written notice thereof to the Contractor. Such notice shall specify the non-conformity, direct the Contractor at its cost and to perform specified curative work, and specify the period of time determined by the Company reasonably necessary for completion of the curative work. If the Contractor fails within the time stated following such notice to cure the nonconformity specified therein, the Company, in addition to and without waiving any of its other remedies, may perform the work and charge the Contractor for its actual costs incurred in connection therewith.

18. Fees.

Contractor will pay the Company its reasonable costs incurred in obtaining permits, reviews, inspections, tests, approvals, and any other undertakings performed by the Company, its Manager or its Engineer or its professional consultants in connection with the construction and acceptance of the Main Extension.

19. Record Drawings.

Contractor represents and warrants that Record Drawings submitted pursuant to this Agreement are accurate. This Agreement shall not be construed to require the Company to verify any such drawings or information or to warrant their accuracy.

20. Mediation and Arbitration.

In the event a dispute should arise between the Company, and Contractor, the parties shall either:

A. Participate in at least four hours of mediation in accordance with the mediation procedures of United States Arbitration & Mediation Midwest, Inc. The parties agree to share equally in the costs of the mediation. The mediation shall be administered by the offices of United States Arbitration & Mediation Midwest, Inc., 720 Olive Street, Suite 2300, St. Louis, Mo 63101 314-231-4642; or

**B. Refer the dispute to binding arbitration before United States Arbitration and Mediation, Midwest, Inc. in accordance with United States Arbitration and Mediation Midwest Inc. Rules of Arbitration. The arbitrator's decision shall be final and binding and judgment may be entered thereon.**

**C. In the event of arbitration of the dispute, each party shall be responsible for its share of the arbitration fees in accordance with the applicable Rules of Arbitration.**

21. Company to Act Reasonably.

In exercising its rights and duties herein, the Company shall not act unreasonably; specifically, it shall not unreasonably withhold its approval, where approval is required, nor act unreasonably with respect to inspections and application of prevailing construction and engineering standards.

22. Assignment of Contract.

Contractor shall not assign this contract without the prior written consent of Company which consent shall not be unreasonably withheld.

23. Applicable Laws.

The parties hereby agree that this Contract shall be governed by the laws of the State of Missouri.

24. Severability.

In the event any one or more of the provisions contained in this Contract or the application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions of this Contract and any application thereof shall not in any way be affected or impaired

25. Notices to the Parties.

All notices to the parties shall be in writing and shall be sent by first class mail to the persons and addresses specified below unless either party gives written notice of a change of address.

In WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate on the date first above written.

**THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH**

**MAY BE ENFORCED BY THE PARTIES**

**BIG ISLAND WATER COMPANY, INC.**

By: \_\_\_\_\_

**FOLSOM RIDGE LLC**

By: \_\_\_\_\_

**EXHIBIT H**  
**AGREEMENTS PERTAINING TO ASSETS BEING CONVEYED**

[itemize]