

DOCKET NO. 970530-WU

REQUEST TO ESTABLISH DOCKET

Date 5/2/97

1. Division Name/Staff Name WAW/Kanders et al

2. OPR WAW

3. OCR LEG

4. Suggested Docket Title Request to establish reclaimed water rate for H&S Grove in Brevard County by Florida Cities Water Company - Barefoot Bay Division

5. Suggested Docket Mailing List (attach separate sheet if necessary)

A. Parties (Provide names of regulated companies or use abbreviation from list below if Parties should include all regulated companies in one or more industries; provide names and addresses of nonregulated companies; provide names, addresses, and affiliation (i.e., attorney, company liaison officer, or customer) of individuals.)

Florida Cities Water Company
c/o Ken Gattin
1709-D Mahan Drive
Tallahassee, FL 32308

B. Interested Persons/Companies (Provide names, complete mailing addresses, and affiliation. Use abbreviation from list below if interested Persons should include all regulated companies in one or more industries.)

REGULATED INDUSTRIES

Investor-Owned Electrics (EI)	Water Utilities (WU)
Electric Cooperatives (EC)	Local Exchange Telephone Cos. (TL)
Municipal Electrics (EM)	Interexchange Telephone Cos. (TI)
Gas Utilities (GU)	Coin-Operated Telephone Cos. (TC)
Wastewater Utilities (SU)	Shared Tenant Telephone Cos. (TS)
	Alternate Access Vendors (TA)

6. Check One:

- Documentation attached.
- Documentation will be provided with recommendation.

GATLIN, SCHIEFELBEIN & COWDERY, P.A.

Attorneys at Law

**The Mahan Station
1709-D Mahan Drive
Tallahassee, Florida 32308**

B. KENNETH GATLIN
WAYNE L. SCHIEFELBEIN
KATHRYN G. W. COWDERY

TELEPHONE (904) 877-5609
TELECOPIER (904) 877-9031
E-MAIL: bk.gatlin@netally.com

April 30, 1997

HAND DELIVERY

RECEIVED

APR 30 1997

Mr. Charles H. Hill, Director
Division of Water and Wastewater
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Florida Public Service Commission
Division of Water and Wastewater

RE: Florida Cities Water Company, Barefoot Bay Division,
Brevard County
Special Reclaimed Water (Wastewater)
Rate Schedule for H&S Grove

Dear Mr. Hill:

Please find enclosed Florida Cities Water Company's original sheet no. 24.1, which provides for a \$0.00 GPD charge for reclaimed water service rendered to the H&S Grove site.

Also enclosed is a copy of a Permissive Use Agreement between Florida Cities Water Company and South Florida Sod, Inc.

The H&S Grove site was purchased by FCWC for disposal of reclaimed water in order to meet the FDEP requirement to limit the surface water discharge. The agreement provides that the lessee will maintain the site, irrigation system, and dispose of, at least, 525,000 GPD of reclaimed water from the Barefoot Bay WWTP.

FCWC considered several options, including recreational, cattle, sod, and grove use of the property. For your information, enclosed is a copy of a matrix entitled "H&S Spray Field Options." This demonstrates clearly, the use of this property as a sod farm is most beneficial to FCWC and its customers.

DOCUMENT NUMBER-DATE

04450 MAY-56

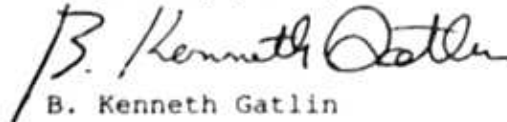
FPSC-RECORDS/REPORTING

Letter to Charles H. Hill, Director
April 30, 1997
Page 2

Please let us know at your earliest convenience if this tariff sheet meets with your approval.

Thank you.

Very truly yours,

A handwritten signature in cursive script that reads "B. Kenneth Gatlin". The signature is written in dark ink and is positioned above the printed name.

B. Kenneth Gatlin

BKG/met
Enclosures

SPECIAL RECLAIMED WATER (WASTEWATER)

RATE SCHEDULE FOR H&S GROVES

Availability - Reclaimed water service in accordance with this rate schedule is specifically for the H&S Property for the certificated area in Brevard County, Florida.

Applicability - This rate is available only to the H&S Property per an Agreement between Florida Cities Water Company (FCWC) and South Florida Sod, INC., dated Jan. 25, 1997, for the use of reclaimed water from FCWC's Advanced Wastewater Treatment Plant.

Rate (Monthly)

General Service

Callonage Charge	\$0.00	per 1,000 gallons of effluent water
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Limitations - Subject to all of the Rules and Regulations of the Company and Agreement.

Effective Date: _____.

Type of Filing: 1995 Rate Case (Final Rates).

Gerald S. Allen
President

PERMISSIVE USE AGREEMENT

THIS AGREEMENT made and entered into this 25th day of January, 1996⁷, by and between **FLORIDA CITIES WATER COMPANY**, a Florida Corporation, having its principal office at 4837 Swift Rd., Sarasota, Florida 34231, hereinafter called "LESSOR" and South Florida Sod Inc. hereinafter called "LESSEE";

WHEREAS, LESSOR is the owner of certain lands in **Brevard County, Florida**, more particularly described in Exhibit "A" attached hereto and made a part hereof (hereinafter called "Property"); and

WHEREAS, LESSOR owns and operates a wastewater treatment plant located in the vicinity of said land which has the capability to produce 750,000 gallons (annual average) of reclaimed water per day suitable for the irrigation of crops (hereinafter called "Plant"); and

WHEREAS, LESSOR desires to dispose of said reclaimed water produced at Plant through the irrigation of Property and the Barefoot Bay Golf Course to the extent that the discharge of reclaimed water to surface waters can be eliminated as required by its permits issued by the Florida Department of Environmental Protection and other applicable regulatory agencies (herein after call "Plant Permits"); and

WHEREAS, LESSEE is desirous of obtaining exclusive farming rights and privileges, as hereinafter provided, upon Property.

NOW, THEREFORE, in consideration of the covenants to be kept and performed by the parties hereto and, net of any applicable tax, the sum of One Dollar (\$1.00), cash in hand paid by LESSEE to LESSOR, receipt of which is hereby acknowledged, it is agreed as follows:

1. LESSOR grants to LESSEE the right and privilege to use Property for purposes of growing citrus fruit, landscape sod, vegetables and grain, including fodder for livestock, and subject to LESSOR'S approval, other agricultural purposes. LESSOR hereby reserves the right of ingress and egress over, through and across Property for any purposes, including but not limited to development and improvements, and shall not be liable for any damage done to fences, farms, growing crops, drainage canals and other improvements placed, made or permitted on Property.

2. LESSEE hereby covenants and agrees as follows:

A. LESSEE shall not transfer or assign the interest or right provided in this Agreement, nor attempt to grant any sublease or sublicense to any persons whomsoever without the written consent of LESSOR. The consent of LESSOR shall not be unreasonably withheld.

B. Pursuant to the permissive use of Property herein granted, LESSEE shall be responsible for installing and at all times maintaining adequate fencing thereon, and all such fencing shall become and remain the Property of LESSOR.

C. LESSOR has constructed reclaimed water mains and appurtenances as shown on Exhibit 'B' attached hereto and made a part hereof (hereinafter called "Reclaimed Water System"). LESSEE shall be responsible for maintaining Reclaimed Water System in good repair as reasonably determined by LESSOR and any damage thereto shall be promptly repaired or replaced to the reasonable satisfaction of LESSOR.

D. LESSOR has two 8" wells - 850' deep with two 671 Detroit Diesels and two 2,200 gallon liquid fertilizer tanks located on the Property, LESSEE shall have rights to use mentioned wells, diesel engines and tanks provided that such use is in accordance with all applicable state and federal regulations. Wells and equipment shall be maintained by LESSEE and returned to LESSOR in the condition they were provided less average wear and tear due to their use.

E. LESSEE shall be responsible for operating Reclaimed Water System on the Property including furnishing all labor equipment and bearing all other expenses in connection therewith. LESSEE shall be responsible for posting signs notifying the public, that the Property is irrigated with reclaimed water. LESSEE agrees to accept at least 525,000 gallons per day on an annual average daily flow basis subject to availability from Plant. LESSEE shall begin accepting reclaimed water within thirty (30) day of the effective date of this Agreement. Notwithstanding, the amount of reclaimed water accepted by LESSEE may vary from day to day and furthermore, during prolonged periods of wet weather, LESSEE may cease accepting reclaimed water for not more than five (5) consecutive days to the extent that LESSOR, in LESSOR'S opinion, has storage capacity sufficient to temporarily store excess reclaimed water produced. Nevertheless, under any circumstances, LESSEE agrees to accept reclaimed to the extent necessary, in LESSOR'S opinion, to comply with Plant Permits. LESSOR shall provide reclaimed water that meets all requirements for public access reuse in accordance with Section 62-610, Part 3, Florida Administrative Code (hereinafter called "FAC") and LESSEE'S use of such water shall be in accordance with such rule.

F. LESSEE may use reclaimed water for irrigation of edible crops provided LESSEE'S irrigation practices are in compliance with Section 62-610.475, FAC. LESSEE shall maintain an inventory of commercial agricultural operations using reclaimed water to irrigate edible crops. The inventory of edible crop irrigation shall be submitted to the LESSOR at least 60 days before commencing the use of reclaimed water for irrigation of edible crops. An inventory of edible crop irrigation shall be submitted annually to LESSOR not later than January 31 each year, with a report of reclaimed water utilization as required by Section 62-610.870(3), FAC. The inventory of edible crop irrigation shall include the following:

- (1) Name of the agricultural operation.
- (2) Name and telephone number of the owner or operator of the agricultural operation.

- (3) Address of the agricultural operation.
- (4) Edible crops irrigated with reclaimed water.
- (5) Type of application (irrigation) method used.
- (6) Approximate area under irrigation on which edible crops are grown.

G. **LESSEE** will not commit waste on or damage to the above described lands and will use due care to prevent others from doing so.

H. **LESSEE** will not erect any building or improvements of any kind on the above described lands, nor use or occupy the above described lands in any manner, or for any purpose, other than for the uses and purposes expressly authorized herein without the written consent of **LESSOR** first having been obtained.

I. **LESSEE** shall not incur any indebtedness giving right to a lien of any kind upon **LESSOR'S** interest in and to the above described lands. **LESSOR'S** interest shall not be subject to any liens for improvements made by **LESSEE** on the above described lands. In the event any liens are filed, due to improvements made by **LESSEE**, **LESSEE** shall immediately discharge said lien by such manner as permitted by law.

J. **LESSEE** shall indemnify and hold **LESSOR** harmless from and against any claims, causes of action, actions, law suits, costs, including reasonable attorney's fees, and damages incurred by **LESSOR** due to **Property** damage or personal injury caused by wrongful acts or negligence of **LESSEE**, his agents or employees. **LESSEE** shall, throughout the term of this Agreement, at **LESSEE'S** cost and expense, keep any buildings, including additions or improvements, constantly insured against loss or damage by fire and those perils included in an extended coverage insurance endorsement including vandalism and malicious mischief, in an amount equal to the full replacement value thereof. Further, **LESSEE** shall carry Public Liability insurance in a minimum, amount of at least One Hundred Thousand Dollars (\$100,000) for personal injury or death/Three Hundred Thousand Dollars (\$300,000), for combined single limit coverage for personal injury and/or death and/or **Property** damage, naming **LESSOR** as co-insured and **LESSEE** shall deliver a Certificate of such insurance to **LESSOR** evidencing same and providing that said insurance will not be canceled without giving **LESSOR** ten (10) days prior notice. The insurance carrier must be licensed to transact business in the State of Florida and must have a Best's rating of A VI or higher.

K. **LESSEE** agrees to keep, observe and comply with all requirements of applicable local, State and Federal laws, rules, regulations or ordinances when utilizing the **Property** as provided herein. The **LESSEE** shall indemnify, defend, save and hold harmless the **LESSOR** from and against, and shall pay on demand, any and all losses, liabilities, damages, costs, expenses and charges suffered or incurred by **LESSOR** as a result of failure of the **LESSEE** to comply with all applicable Environmental Regulations. The term "Environmental Regulations" means all present and future laws (including CERCLA and the appropriate provisions of the Statutes and Regulations promulgated thereunder), orders, judgments, decrees,

agreements, authorizations, consents, licenses, permits and other government restrictions and requirements relating to the environment or any hazardous substance.

L. **LESSEE** shall conduct such accepted agricultural practices as are reasonable, including mowing, fertilizing or chopping to maintain the productivity of **Property**, for the type of agricultural endeavor being conducted, to not less than its capability in its condition as of the effective date of this Agreement.

3. The initial term of the lease shall be five (5) years with automatic renewals every year thereafter subject to the cancellation provisions herein.

4. During the initial term of this lease, **LESSEE** shall pay **LESSOR**, in advance, an annual lease payment in the amount of \$1,750. The first payment shall be made upon the effective date of this Agreement and subsequent payments shall be made at least ten (10) days prior to each anniversary of this Agreement. Lease payments for subsequent terms, if any, shall be as mutually agreed by the parties hereto.

5. It is understood and agreed that on or after the third anniversary of the initial five year term either **LESSOR** or **LESSEE**, at its sole discretion, shall have the right to cancel this Agreement at any time, by written notice, one to the other, such cancellation to become effective upon 180 days written notice. In the event of such cancellation by **LESSOR**, **LESSOR** shall pay a pro rata refund of advance lease payments to **LESSEE**. If the **LESSOR** exercises this right during the initial five year term of this Agreement, the **LESSOR** shall pay **LESSEE** a buy-out fee constituting of a pro rata share of **LESSEE'S** initial capital investment in improvements to **Property**. For purposes of this provision, improvements to **Property** shall be limited to land preparation for the growing of sod (land leveling and fumigation.) Said buy-out fee shall be eight hundred dollars (\$800) per acre at the end of the third anniversary and a prorata amount of \$800 per acre if canceled after the third anniversary but before the fifth anniversary for land prepared for the growing of sod. There shall be no such fee applicable to any other parts of **Property**.

6. Nothing herein contained shall be construed as limiting **LESSOR** from having the full use and enjoyment of the **Property**, save only as to the rights granted to **LESSEE** by the terms of the Agreement, and nothing herein contained shall be construed or interpreted as granting anything to **LESSEE** other than the permissive use to use **Property** only for farming.

7. In the event of any breach or non-performance of any of the covenants, agreements, terms or conditions to be performed by **LESSEE**, and said breach or non-performance continues for ten (10) days after **LESSEE** receives written notice from **LESSOR** to remedy said breach or to perform, **LESSOR** has the right to declare this Agreement terminated and to re-enter the described lands and remove **LESSEE** and its **Property** there from, and **LESSEE** agrees to peacefully vacate **Property**.

8. It is understood and agreed that this Agreement sets forth all of the covenants, agreements, terms and conditions between the parties and that there are no other oral or written agreements between them.

9. It is further understood and agreed that no subsequent amendments, alterations or additions to this Agreement shall be binding upon the parties hereto unless reduced to writing and executed by said parties.

10. LESSOR and LESSEE agree that this Agreement shall be governed by and construed under the laws of the State of Florida.

11. The parties hereto agree that time is of the essence in this Agreement.

12. All notices or requests between the parties shall be in writing and shall be served or mailed Certified Mail (Return Receipt Requested) at the addresses set forth below or such address as the applicable party shall designate in writing:

LESSOR: Florida Cities Water Company
4837 Swift Road, Suite 100
Sarasota, Florida 34231

Copy to:
Florida Cities Water Company
Attn: General Counsel
255 Alhambra Circle
Coral Gables, FL 33134

LESSEE: South Florida Sod Inc.
3601 Eleven Mile Road
Fort Pierce, FL 34945

13. This Agreement and all of its terms and conditions shall extend to and be binding upon parties hereto and upon their respective heirs, executors, administrators, successors and assigns.

14. The invalidation of any provision or clause in whole or in part by judgement or court order shall, in no way, affect any of the other provisions or clauses, which shall remain in full force and effect.

15. It is understood between the parties hereto that **Property** has been inspected by **LESSEE** and that **Property** is being accepted in an "as is" condition.

16. **LESSEE** shall not remove or permit to be removed any soil from **Property**, excepting that which is removed in normal sod harvesting operations. Any soil removed during normal sod harvesting operations shall be subsequently replaced.

17. LESSEE shall pay any and all broker commissions for the Agreement, if any. LESSOR covenants that there are not any brokers claiming a commission through LESSOR.

18. The prevailing party in any dispute or legal proceeding brought to enforce rights hereunder shall be entitled to reimbursement of all reasonable costs and expenses, including but not limited to attorneys fees at all judicial levels.

IN WITNESS WHEREOF, LESSOR AND LESSEE have executed this Agreement as of the date and year first above written.

WITNESSES:

Will West

LESSOR:

FLORIDA CITIES WATER COMPANY

Quentin Chubbuck By: Larry Hill
President

WITNESSES:

J. H. Cantor
Don Castle

LESSEE:

SOUTH FLORIDA SOD INC.

By: Wiley J. McCall

Exhibit "A"

- 1) 314 acre tract of land located in the NW 1/4 of Section 8, Township 30 S, Range 38 E, lying north of the center line of the vacated San Sebastian Drainage Canal; and the NE 1/4 of Section 89, Township 30 S, Range 8E of Brevard County, Florida; and
- 2) 40 acre tract of land located in the NE 1/4 of the NW 1/4 of Section 9, Township 30 S, Range 38 E in Brevard County, Florida

H&S SPRAYFIELD OPTIONS

POTENTIAL LESSEES	PURPOSE	DISPOSAL CAPABILITY	APPROXIMATE CAPITAL INVESTMENT IN IRRIGATION SYSTEM	APPROXIMATE OPERATIONAL INVESTMENT	ASSESSED VALUE	TERM OF LEASE	POTENTIAL CASH FLOW	ENHANCEMENT OF PROPERTY VALUE
FCWC	Sprayfield	600 K +/-	250K	40k/yr includes staff rqmt., mowing and maintenance	\$4000/acre	Not Applicable	None	Some due to leveling of property.
M. Kingery	Recreational	300K +/-	Upgrade existing system to usable condition 40 K	10k/ yr maintain existing system	\$4000/acre	Monthly	10/yr	None
B. Nidy	Cattle	600K +/-	Install fixed head irrigation system 250 K	10K/ yr maintain fixed head system	\$250/acre	1 Year +	1500/Year	None
R. Chesser	Cattle	600K +/-	Install fixed head irrigation system 250 K	10K/ yr maintain fixed head system	\$250/acre	1 Year +	1500/Year	None
G. Martin/ Auburndale Fruit Company	Grove	Dependent on weather and trees (est. 500K +/-)	75K to install additional microjets and 150k to restore grove.	Maintain existing system and half citrus operating cost (150k av year)	\$1,200/acre	10 Year +	Split income derived from grove, no expected profit until after 13 yrs	Some
W. McCall	Sod	500 K +/-	0	0	\$400/acre	5 Year +	12,000/yr after 5 years	Some

GATLIN, SCHIEFELBEIN & COWDERY, P.A.

Attorneys at Law

**The Mahan Station
1709-D Mahan Drive
Tallahassee, Florida 32308**

**B. KENNETH GATLIN
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Division of Water and Wastewater
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Florida Public Service Commission
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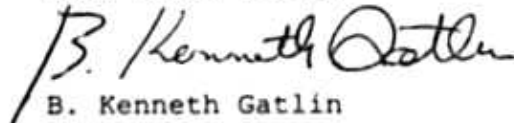
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Page 2

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B. Kenneth Gatlin

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Type of Filing: 1995 Rate Case (Final Rates).

Gerald S. Allen
President

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WHEREAS, LESSOR owns and operates a wastewater treatment plant located in the vicinity of said land which has the capability to produce 750,000 gallons (annual average) of reclaimed water per day suitable for the irrigation of crops (hereinafter called "**Plant**"); and

WHEREAS, LESSOR desires to dispose of said reclaimed water produced at **Plant** through the irrigation of **Property** and the Barefoot Bay Golf Course to the extent that the discharge of reclaimed water to surface waters can be eliminated as required by its permits issued by the Florida Department of Environmental Protection and other applicable regulatory agencies (herein after call "**Plant Permits**"); and

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H. **LESSEE** will not erect any building or improvements of any kind on the above described lands, nor use or occupy the above described lands in any manner, or for any purpose, other than for the uses and purposes expressly authorized herein without the written consent of **LESSOR** first having been obtained.

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L. **LESSEE** shall conduct such accepted agricultural practices as are reasonable, including mowing, fertilizing or chopping to maintain the productivity of **Property**, for the type of agricultural endeavor being conducted, to not less than its capability in its condition as of the effective date of this Agreement.

3. The initial term of the lease shall be five (5) years with automatic renewals every year thereafter subject to the cancellation provisions herein.

4. During the initial term of this lease, **LESSEE** shall pay **LESSOR**, in advance, an annual lease payment in the amount of \$1,750. The first payment shall be made upon the effective date of this Agreement and subsequent payments shall be made at least ten (10) days prior to each anniversary of this Agreement. Lease payments for subsequent terms, if any, shall be as mutually agreed by the parties hereto.

5. It is understood and agreed that on or after the third anniversary of the initial five year term either **LESSOR** or **LESSEE**, at its sole discretion, shall have the right to cancel this Agreement at any time, by written notice, one to the other, such cancellation to become effective upon 180 days written notice. In the event of such cancellation by **LESSOR**, **LESSOR** shall pay a pro rata refund of advance lease payments to **LESSEE**. If the **LESSOR** exercises this right during the initial five year term of this Agreement, the **LESSOR** shall pay **LESSEE** a buy-out fee constituting of a pro rata share of **LESSEE'S** initial capital investment in improvements to **Property**. For purposes of this provision, improvements to **Property** shall be limited to land preparation for the growing of sod (land leveling and fumigation.) Said buy-out fee shall be eight hundred dollars (\$800) per acre at the end of the third anniversary and a prorata amount of \$800 per acre if canceled after the third anniversary but before the fifth anniversary for land prepared for the growing of sod. There shall be no such fee applicable to any other parts of **Property**.

6. Nothing herein contained shall be construed as limiting **LESSOR** from having the full use and enjoyment of the **Property**, save only as to the rights granted to **LESSEE** by the terms of the Agreement, and nothing herein contained shall be construed or interpreted as granting anything to **LESSEE** other than the permissive use to use **Property** only for farming.

7. In the event of any breach or non-performance of any of the covenants, agreements, terms or conditions to be performed by **LESSEE**, and said breach or non-performance continues for ten (10) days after **LESSEE** receives written notice from **LESSOR** to remedy said breach or to perform, **LESSOR** has the right to declare this Agreement terminated and to re-enter the described lands and remove **LESSEE** and its **Property** there from, and **LESSEE** agrees to peacefully vacate **Property**.

8. It is understood and agreed that this Agreement sets forth all of the covenants, agreements, terms and conditions between the parties and that there are no other oral or written agreements between them.

9. It is further understood and agreed that no subsequent amendments, alterations or additions to this Agreement shall be binding upon the parties hereto unless reduced to writing and executed by said parties.

10. LESSOR and LESSEE agree that this Agreement shall be governed by and construed under the laws of the State of Florida.

11. The parties hereto agree that time is of the essence in this Agreement.

12. All notices or requests between the parties shall be in writing and shall be served or mailed Certified Mail (Return Receipt Requested) at the addresses set forth below or such address as the applicable party shall designate in writing:

LESSOR: Florida Cities Water Company
4837 Swift Road, Suite 100
Sarasota, Florida 34231

Copy to:
Florida Cities Water Company
Attn: General Counsel
255 Alhambra Circle
Coral Gables, FL 33134

LESSEE: South Florida Sod Inc.
3601 Eleven Mile Road
Fort Pierce, FL 34945

13. This Agreement and all of its terms and conditions shall extend to and be binding upon parties hereto and upon their respective heirs, executors, administrators, successors and assigns.

14. The invalidation of any provision or clause in whole or in part by judgement or court order shall, in no way, affect any of the other provisions or clauses, which shall remain in full force and effect.

15. It is understood between the parties hereto that Property has been inspected by LESSEE and that Property is being accepted in an "as is" condition.

16. LESSEE shall not remove or permit to be removed any soil from Property, excepting that which is removed in normal sod harvesting operations. Any soil removed during normal sod harvesting operations shall be subsequently replaced.

17. LESSEE shall pay any and all broker commissions for the Agreement, if any. LESSOR covenants that there are not any brokers claiming a commission through LESSOR.

18. The prevailing party in any dispute or legal proceeding brought to enforce rights hereunder shall be entitled to reimbursement of all reasonable costs and expenses, including but not limited to attorneys fees at all judicial levels.

IN WITNESS WHEREOF, LESSOR AND LESSEE have executed this Agreement as of the date and year first above written.

WITNESSES:

Will West

LESSOR:

FLORIDA CITIES WATER COMPANY

By: [Signature]
President

WITNESSES:

[Signature]

LESSEE:

SOUTH FLORIDA SOD INC.

[Signature]

By: Wiley J. McCall

Exhibit "A"

- 1) 314 acre tract of land located in the NW 1/4 of Section 8, Township 30 S, Range 38 E, lying north of the center line of the vacated San Sebastian Drainage Canal; and the NE 1/4 of Section 89, Township 30 S, Range 8E of Brevard County, Florida; and
- 2) 40 acre tract of land located in the NE 1/4 of the NW 1/4 of Section 9, Township 30 S, Range 38 E in Brevard County, Florida

H&S SPRAYFIELD OPTIONS

POTENTIAL LESSEES	PURPOSE	DISPOSAL CAPABILITY	APPROXIMATE CAPITAL INVESTMENT IN IRRIGATION SYSTEM	APPROXIMATE OPERATIONAL INVESTMENT	ASSESSED VALUE	TERM OF LEASE	POTENTIAL CASH FLOW	ENHANCEMENT OF PROPERTY VALUE
FCWC	Sprayfield	600 K +/-	250K	40k/yr includes staff rqmt., mowing and maintenance	\$4000/acre	Not Applicable	None	Some due to leveling of property.
M. Kingery	Recreational	300K +/-	Upgrade existing system to usable condition 40 K	10k/ yr maintain existing system	\$4000/acre	Monthly	10/yr	None
B. Nidy	Cattle	600K +/-	Install fixed head irrigation system 250 K	10K/ yr maintain fixed head system	\$250/acre	1 Year +	1500/Year	None
R. Chesser	Cattle	600K +/-	Install fixed head irrigation system 250 K	10K/ yr maintain fixed head system	\$250/acre	1 Year +	1500/Year	None
G. Martin/ Auburndale Fruit Company	Grove	Dependent on weather and trees (est. 500K +/-)	75K to install additional microjets and 150k to restore grove.	Maintain existing system and half citrus operating cost (150k av year)	\$1,200/acre	10 Year +	Split income derived from grove, no expected profit until after 13 yrs	Some
W. McCall	Sod	500 K +/-	0	0	\$400/acre	5 Year +	12,000/yr after 5 years	Some

GATLIN, SCHIEFELBEIN & COWDERY, P.A.

Attorneys at Law

**The Mahan Station
1709-D Mahan Drive
Tallahassee, Florida 32308**

**B. KENNETH GATLIN
WAYNE L. SCHIEFELBEIN
KATHRYN G.W. COWDERY**

TELEPHONE (904) 877-5609
TELECOPIER (904) 877-9031
E-MAIL: bkgatlin@netally.com

April 30, 1997

HAND DELIVERY

RECEIVED

APR 30 1997

Mr. Charles H. Hill, Director
Division of Water and Wastewater
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Florida Public Service Commission
Division of Water and Wastewater

RE: Florida Cities Water Company, Barefoot Bay Division,
Brevard County
Special Reclaimed Water (Wastewater)
Rate Schedule for H&S Grove

Dear Mr. Hill:

Please find enclosed Florida Cities Water Company's original sheet no. 24.1, which provides for a \$0.00 GPD charge for reclaimed water service rendered to the H&S Grove site.

Also enclosed is a copy of a Permissive Use Agreement between Florida Cities Water Company and South Florida Sod, Inc.

The H&S Grove site was purchased by FCWC for disposal of reclaimed water in order to meet the FDEP requirement to limit the surface water discharge. The agreement provides that the lessee will maintain the site, irrigation system, and dispose of, at least, 525,000 GPD of reclaimed water from the Barefoot Bay WWTP.

FCWC considered several options, including recreational, cattle, sod, and grove use of the property. For your information, enclosed is a copy of a matrix entitled "H&S Spray Field Options." This demonstrates clearly, the use of this property as a sod farm is most beneficial to FCWC and its customers.

DOCUMENT NUMBER-DATE
04450 MAY-56
FPSC-RECORDS/REPORTING

Letter to Charles H. Hill, Director

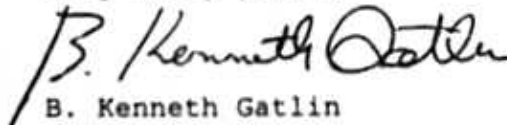
April 30, 1997

Page 2

Please let us know at your earliest convenience if this tariff sheet meets with your approval.

Thank you.

Very truly yours,

A handwritten signature in black ink that reads "B. Kenneth Gatlin". The signature is written in a cursive style with a large, stylized initial "B".

B. Kenneth Gatlin

BKG/met
Enclosures

SPECIAL RECLAIMED WATER (WASTEWATER)

RATE SCHEDULE FOR H&S GROVES

Availability - Reclaimed water service in accordance with this rate schedule is specifically for the H&S Property for the certificated area in Brayard County, Florida.

Applicability - This rate is available only to the H&S Property per an Agreement between Florida Cities Water Company (FCWC) and South Florida Sod, INC., dated Jan. 25, 1997, for the use of reclaimed water from FCWC's Advanced Wastewater Treatment Plant.

Rate (Monthly)

General Service

Gallonge Charge	\$0.00	per 1,000 gallons of effluent water
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Limitations - Subject to all of the Rules and Regulations of the Company and Agreement.

Effective Date: _____.

Type of Filing: 1995 Rate Case (Final Rates).

Gerald S. Allen
President

PERMISSIVE USE AGREEMENT

THIS AGREEMENT made and entered into this 25th day of January, 1996⁷, by and between **FLORIDA CITIES WATER COMPANY**, a Florida Corporation, having its principal office at 4837 Swift Rd., Sarasota, Florida 34231, hereinafter called "LESSOR" and South Florida Sod Inc. hereinafter called "LESSEE";

WHEREAS, LESSOR is the owner of certain lands in Brevard County, Florida, more particularly described in Exhibit "A" attached hereto and made a part hereof (hereinafter called "Property"); and

WHEREAS, LESSOR owns and operates a wastewater treatment plant located in the vicinity of said land which has the capability to produce 750,000 gallons (annual average) of reclaimed water per day suitable for the irrigation of crops (hereinafter called "Plant"); and

WHEREAS, LESSOR desires to dispose of said reclaimed water produced at Plant through the irrigation of Property and the Barefoot Bay Golf Course to the extent that the discharge of reclaimed water to surface waters can be eliminated as required by its permits issued by the Florida Department of Environmental Protection and other applicable regulatory agencies (herein after call "Plant Permits"); and

WHEREAS, LESSEE is desirous of obtaining exclusive farming rights and privileges, as hereinafter provided, upon Property.

NOW, THEREFORE, in consideration of the covenants to be kept and performed by the parties hereto and, net of any applicable tax, the sum of One Dollar (\$1.00), cash in hand paid by LESSEE to LESSOR, receipt of which is hereby acknowledged, it is agreed as follows:

1. LESSOR grants to LESSEE the right and privilege to use Property for purposes of growing citrus fruit, landscape sod, vegetables and grain, including fodder for livestock, and subject to LESSOR'S approval, other agricultural purposes. LESSOR hereby reserves the right of ingress and egress over, through and across Property for any purposes, including but not limited to development and improvements, and shall not be liable for any damage done to fences, farms, growing crops, drainage canals and other improvements placed, made or permitted on Property.

2. LESSEE hereby covenants and agrees as follows:

A. LESSEE shall not transfer or assign the interest or right provided in this Agreement, nor attempt to grant any sublease or sublicense to any persons whomsoever without the written consent of LESSOR. The consent of LESSOR shall not be unreasonably withheld.

B. Pursuant to the permissive use of Property herein granted, LESSEE shall be responsible for installing and at all times maintaining adequate fencing thereon, and all such fencing shall become and remain the Property of LESSOR.

C. LESSOR has constructed reclaimed water mains and appurtenances as shown on Exhibit 'B' attached hereto and made a part hereof (hereinafter called "Reclaimed Water System"). LESSEE shall be responsible for maintaining Reclaimed Water System in good repair as reasonably determined by LESSOR and any damage thereto shall be promptly repaired or replaced to the reasonable satisfaction of LESSOR.

D. LESSOR has two 8" wells - 850' deep with two 671 Detroit Diesels and two 2,200 gallon liquid fertilizer tanks located on the Property, LESSEE shall have rights to use mentioned wells, diesel engines and tanks provided that such use is in accordance with all applicable state and federal regulations. Wells and equipment shall be maintained by LESSEE and returned to LESSOR in the condition they were provided less average wear and tear due to their use.

E. LESSEE shall be responsible for operating Reclaimed Water System on the Property including furnishing all labor equipment and bearing all other expenses in connection therewith. LESSEE shall be responsible for posting signs notifying the public, that the Property is irrigated with reclaimed water. LESSEE agrees to accept at least 525,000 gallons per day on an annual average daily flow basis subject to availability from Plant. LESSEE shall begin accepting reclaimed water within thirty (30) day of the effective date of this Agreement. Notwithstanding, the amount of reclaimed water accepted by LESSEE may vary from day to day and furthermore, during prolonged periods of wet weather, LESSEE may cease accepting reclaimed water for not more than five (5) consecutive days to the extent that LESSOR, in LESSOR'S opinion, has storage capacity sufficient to temporarily store excess reclaimed water produced. Nevertheless, under any circumstances, LESSEE agrees to accept reclaimed to the extent necessary, in LESSOR'S opinion, to comply with Plant Permits. LESSOR shall provide reclaimed water that meets all requirements for public access reuse in accordance with Section 62-610, Part 3, Florida Administrative Code (hereinafter called "FAC") and LESSEE'S use of such water shall be in accordance with such rule.

F. LESSEE may use reclaimed water for irrigation of edible crops provided LESSEE'S irrigation practices are in compliance with Section 62-610.475, FAC. LESSEE shall maintain an inventory of commercial agricultural operations using reclaimed water to irrigate edible crops. The inventory of edible crop irrigation shall be submitted to the LESSOR at least 60 days before commencing the use of reclaimed water for irrigation of edible crops. An inventory of edible crop irrigation shall be submitted annually to LESSOR not later than January 31 each year, with a report of reclaimed water utilization as required by Section 62-610.870(3), FAC. The inventory of edible crop irrigation shall include the following:

- (1) Name of the agricultural operation.
- (2) Name and telephone number of the owner or operator of the agricultural operation.

- (3) Address of the agricultural operation.
- (4) Edible crops irrigated with reclaimed water.
- (5) Type of application (irrigation) method used.
- (6) Approximate area under irrigation on which edible crops are grown.

G. LESSEE will not commit waste on or damage to the above described lands and will use due care to prevent others from doing so.

H. LESSEE will not erect any building or improvements of any kind on the above described lands, nor use or occupy the above described lands in any manner, or for any purpose, other than for the uses and purposes expressly authorized herein without the written consent of LESSOR first having been obtained.

I. LESSEE shall not incur any indebtedness giving right to a lien of any kind upon LESSOR'S interest in and to the above described lands. LESSOR'S interest shall not be subject to any liens for improvements made by LESSEE on the above described lands. In the event any liens are filed, due to improvements made by LESSEE, LESSEE shall immediately discharge said lien by such manner as permitted by law.

J. LESSEE shall indemnify and hold LESSOR harmless from and against any claims, causes of action, actions, law suits, costs, including reasonable attorney's fees, and damages incurred by LESSOR due to Property damage or personal injury caused by wrongful acts or negligence of LESSEE, his agents or employees. LESSEE shall, throughout the term of this Agreement, at LESSEE'S cost and expense, keep any buildings, including additions or improvements, constantly insured against loss or damage by fire and those perils included in an extended coverage insurance endorsement including vandalism and malicious mischief, in an amount equal to the full replacement value thereof. Further, LESSEE shall carry Public Liability insurance in a minimum, amount of at least One Hundred Thousand Dollars (\$100,000) for personal injury or death/Three Hundred Thousand Dollars (\$300,000), for combined single limit coverage for personal injury and/or death and/or Property damage, naming LESSOR as co-insured and LESSEE shall deliver a Certificate of such insurance to LESSOR evidencing same and providing that said insurance will not be canceled without giving LESSOR ten (10) days prior notice. The insurance carrier must be licensed to transact business in the State of Florida and must have a Best's rating of A VI or higher.

K. LESSEE agrees to keep, observe and comply with all requirements of applicable local, State and Federal laws, rules, regulations or ordinances when utilizing the Property as provided herein. The LESSEE shall indemnify, defend, save and hold harmless the LESSOR from and against, and shall pay on demand, any and all losses, liabilities, damages, costs, expenses and charges suffered or incurred by LESSOR as a result of failure of the LESSEE to comply with all applicable Environmental Regulations. The term "Environmental Regulations" means all present and future laws (including CERCLA and the appropriate provisions of the Statutes and Regulations promulgated thereunder), orders, judgments, decrees,

agreements, authorizations, consents, licenses, permits and other government restrictions and requirements relating to the environment or any hazardous substance.

L. **LESSEE** shall conduct such accepted agricultural practices as are reasonable, including mowing, fertilizing or chopping to maintain the productivity of **Property**, for the type of agricultural endeavor being conducted, to not less than its capability in its condition as of the effective date of this Agreement.

3. The initial term of the lease shall be five (5) years with automatic renewals every year thereafter subject to the cancellation provisions herein.

4. During the initial term of this lease, **LESSEE** shall pay **LESSOR**, in advance, an annual lease payment in the amount of \$1,750. The first payment shall be made upon the effective date of this Agreement and subsequent payments shall be made at least ten (10) days prior to each anniversary of this Agreement. Lease payments for subsequent terms, if any, shall be as mutually agreed by the parties hereto.

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IN WITNESS WHEREOF, LESSOR AND LESSEE have executed this Agreement as of the date and year first above written.

WITNESSES:

W. Hill

LESSOR:

FLORIDA CITIES WATER COMPANY

Robert J. Chubbuck

By:

Lucy Hill
President

WITNESSES:

LESSEE:

SOUTH FLORIDA SOD INC.

R. H. Smith

Don Castle

By:

W. Ray J. McCall

Exhibit "A"

- 1) 314 acre tract of land located in the NW 1/4 of Section 8, Township 30 S, Range 38 E, lying north of the center line of the vacated San Sebastian Drainage Canal; and the NE 1/4 of Section 89, Township 30 S, Range 8E of Brevard County, Florida; and
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H&S SPRAYFIELD OPTIONS

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