



## Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: May 19, 1999  
 TO: Jennifer Crossman, Division of Legal Services  
 Division of Records and Reporting  
 FROM: Cheryl Johnson, Division of Water and Wastewater *BSM gpw bl*  
 RE: Docket No. 990403-WS, Application for transfer to Transfer to Governmental Authority of Rampart Utilities Inc., to Charlotte County and for cancellation of Certificate Nos. 572-W and 497-S.

Rampart Utilities Inc. (Rampart or utility) is a Class B water and wastewater utility providing service to Victoria Estates and Maple Leaf Estates in Charlotte County, Florida. Rampart provides potable water, which is purchased in bulk from Charlotte County, to its customers. According to its 1997 annual report, Rampart serves approximately 1,316 water and 1,312 wastewater customers with combined water and wastewater revenues of \$896,894 and a combined net operating income of \$79,366.

The Commission granted Rampart's grandfather certificates in Docket No. 941342-WS, by Order No. PSC-95-0750-FOF-WS issued June 22, 1995. The certificate action was pursuant to a September 27, 1994 resolution by the Board of County Commissioners of Charlotte County invoking Commission jurisdiction in Charlotte County.

On March 26, 1999, Rampart filed an application to transfer its facilities to Charlotte County and to cancel its certificates. The application included a copy of the "Rampart Utility System Asset Acquisition Agreement" (Agreement), which was filed with the Commission. The closing was finalized on April 28, 1999. According to the Agreement, the total purchase price for the transfer of assets is \$2,433,200. The \$2,433,200 purchase price amount is subject to the terms, adjustments and prorations as described in the contract at the closing.

AFA \_\_\_\_\_  
 APP \_\_\_\_\_  
 CAF \_\_\_\_\_  
 CMU \_\_\_\_\_  
 CTR \_\_\_\_\_  
 EAG \_\_\_\_\_  
 LEG \_\_\_\_\_  
 MAS \_\_\_\_\_  
 OPC \_\_\_\_\_  
 RRR \_\_\_\_\_  
 SEC \_\_\_\_\_  
 WAW \_\_\_\_\_  
 OTH \_\_\_\_\_

The application states that Charlotte County will assume liability for the customer deposits or unused application fees or charges, including any interest due thereon, through the date of closing and Charlotte County will receive credit. Rampart will provide the county with a listing of current customers by account, customer deposits and an aggregate total, fifteen days prior to closing and at the closing. A copy of a Charlotte County internal memorandum dated March 17, 1999 was provided as evidence that Charlotte County had obtained the utility's most recently available income and expense statement, balance sheet, statement of rate base for regulatory purposes and contributions-in-aid-of-construction. The memorandum was prepared by Mr. Richard E. Howell, Director.

DOCUMENT NUMBER-DATE

06557 MAY 25 99

FPSC-RECORDS/REPORTING

The utility is current with its regulatory assessment fees and was granted an extension to file its annual report information until May 31, 1999. However, Rampart does owe regulatory assessment fees up to the closing date of April 28, 1999. There are no rate dockets pending disposition nor is disposition of gross-up funds for contributions-in-aid-of-construction an issue for this utility.

Based on the above, staff finds that the application is in compliance with Section 367.071(4)(a), Florida Statutes, and Rule 25-30.037(4), Florida Administrative Code. Pursuant to Section 367.071(4)(a), Florida Statutes, the sale of facilities to a governmental authority shall be approved as a matter of right. An order should be issued within thirty days acknowledging the transfer of facilities from Rampart, Inc. to Charlotte County and the cancellation of Certificates Nos. 572-W and 497-S. Furthermore the docket should be closed upon the issuance of the order.

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EXHIBIT "A"

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RAMPART UTILITY SYSTEM ASSET  
ACQUISITION AGREEMENT

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Between  
CHARLOTTE COUNTY, FLORIDA,  
and  
RAMPART UTILITIES, INC.,

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Adopted  
March \_\_, 1999

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**RAMPART UTILITY SYSTEM  
ASSET ACQUISITION AGREEMENT**

**THIS AGREEMENT**, is made and entered into as of this \_\_\_\_\_ day of March, 1999, by and between Charlotte County, Florida, a political subdivision of the State of Florida (the "County"), and Rampart Utilities, Inc., a Florida corporation (collectively "Rampart").

**NOW, THEREFORE**, in consideration of the mutual promises, covenants, representations and agreements contained herein, together with \$10 and other good and valuable consideration exchanged between the parties, the receipt and sufficiency of which are hereby acknowledged, the parties to this Rampart Utility System Asset Acquisition Agreement do undertake, promise and agree for themselves, their permitted successors and assigns as follows:

## ARTICLE I

### DEFINITIONS AND CONSTRUCTION

**SECTION 1.01. DEFINITIONS.** As used in this Rampart Utility System Asset Acquisition Agreement, the following terms shall have the meanings as defined herein unless the context requires otherwise:

**"Agreement"** means this Rampart Utility System Asset Acquisition Agreement, including any amendments and supplements hereto executed and delivered in accordance with the terms hereof.

**"Board"** means the Board of County Commissioners of Charlotte County, Florida.

**"County"** means Charlotte County, a charter county and a political subdivision of the State of Florida.

**"Easements"** means all rights, privileges, easements, leasehold interests, licenses, prescriptive rights, rights-of-ways, and rights to use public and private roads, highways, streets, railroads and other areas owned or used by Rampart in connection with the construction, reconstruction, installation, expansion, maintenance and operation of the Utility System or the Purchased Assets.

**"Excluded Assets"** means those assets, business properties, rights, obligations or liabilities, both tangible and intangible, of Rampart described in Appendix L hereto which shall not be and are not to be sold, conveyed, transferred to or assumed by the County pursuant to this Agreement.

**"Purchased Assets"** means all or substantially all of the water and wastewater utility assets owned by Rampart as described and referenced in Section 3.02(A) hereof.



**"Permitted Exceptions"** means those title exceptions described in Appendix M hereto.

**"Rampart"** means Rampart Utilities, Inc., a Florida corporation, including any duly appointed receiver acting on behalf of Rampart Utilities, Inc. as directed and authorized by a court of competent jurisdiction.

**"Utility System"** means the potable water distribution systems and wastewater collection, transmission, treatment, disposal and reuse systems owned by Rampart, and sometimes commonly referred to as the "Rampart," utility system, which provide services to portion of the unincorporated area of Charlotte County, Florida.

**SECTION 1.02. FINDINGS.** It is hereby ascertained, determined and declared that:

(A) Rampart Utilities Inc. owns and operates a potable water supply, storage, and distribution system and wastewater collection, transmission, treatment, and disposal system in Charlotte County, Florida.

(B) The County has the power and authority to provide potable water and wastewater infrastructure and service within Charlotte County.

(C) The County Commission is required to hold a public hearing on the proposed purchase and sale of all or substantially all of the water and wastewater utility assets owned by Rampart in Charlotte County, Florida, and make a determination that such a purchase and sale is in the public interest.

(D) The County Commission in determining if such a purchase and sale is in the public interest will consider, at a minimum, all of the factors referenced in section 125.3401, Florida Statutes.

(E) The County desires to acquire all or substantially all of the assets which are used and available for use by Rampart in providing services through its water and wastewater utility system in Charlotte County, Florida, and Rampart has consented to sell those assets to the County.

**SECTION 1.03. CONSTRUCTION AND INTERPRETATION.**

(A) Words that indicate a singular number shall include the plural in each case and vice versa, and words that import a person shall include legal entities, firms and corporations.

(B) The terms "herein," "hereunder," "hereby," "hereof," and any similar terms, shall refer to this Agreement; the term "heretofore" shall mean before the date of execution of this Agreement; and the term "hereafter" shall mean on or after the initial date of execution of this Agreement.

(C) Words that reference only one gender shall include all genders.

(D) This Agreement shall be construed as resulting from joint negotiation and authorship. No part of this Agreement shall be construed as the product of any one of the parties hereto.

**SECTION 1.04. INCORPORATION.** The appendices hereto and each of the documents referred to therein are incorporated and made a part hereof in their entirety by reference.

**SECTION 1.05. SECTION HEADINGS.** Any headings preceding the texts of the several Articles, Sections, Appendices, or Exhibits in this Agreement and any table of contents or marginal notes appended to copies hereof, shall be solely for the convenience of reference and shall neither constitute a part of this Agreement nor affect its meaning, construction or effect.

**ARTICLE II**  
**REPRESENTATIONS**

**SECTION 2.01. REPRESENTATIONS OF THE COUNTY.** The County makes the following representations, which shall survive any closing hereunder.

(A) The County is duly organized and validly existing as a charter county and a political subdivision of the State of Florida.

(B) The County has full power and authority to enter into the transactions contemplated by this Agreement.

(C) The County has fulfilled and complied with the provisions of section 125.3401, Florida Statutes, relative to the purchase and sale of a water, sewer or wastewater reuse utility by a county, or will do so prior to closing.

(D) To the best of its knowledge and belief, the County is not in default under any provisions of the laws of the State of Florida material to the performance of its obligations under this Agreement. The Board has duly authorized the execution and delivery of this Agreement and assuming the due authorization, execution and delivery by other parties hereto and the subsequent approval and confirmation by the Board after the public hearing required by Section 125.3401, Florida Statutes, this Agreement shall constitute a valid and legally binding obligation of the County, enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by any applicable bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion of a court of competent jurisdiction in accordance with general principles of equity.

(E) To the best of the County's knowledge and belief, the authorization, execution and delivery of this Agreement and the compliance by the County with the provisions hereof will not conflict with or constitute a material breach of, or default under, any existing law, court or administrative regulation, decree, order, or any provision of the Constitution, or the laws of the State of Florida relating to the County or its affairs, or any ordinance, resolution, agreement, lease, or other instrument to which the County is subject or by which it is bound.

(F) There is no action, suit, investigation, or proceeding pending or, to the County's knowledge and belief, threatened against or affecting the County, at law or in equity or before any federal, state, municipal, or other governmental department, commission, board, bureau, agency or instrumentality, wherein any decision, ruling or finding would adversely affect the transactions contemplated hereby or which in any way would adversely affect the validity of this Agreement or any other agreement or instrument to which the County is a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby.

(G) The County has not dealt with any broker, salesman or finder in connection with the transactions contemplated herein and no sales commissions or finder's fees are due or payable as a result hereof.

**SECTION 2.02. REPRESENTATIONS OF RAMPART.** Except as set forth below, the parties agree that the County is buying the Purchase Assets in an "as is" and "where is" condition without relying upon any warranty or representation from Rampart regarding the physical condition of the Purchased Assets or any of the improvements

constructed thereon. Subject to this assumption, Rampart makes the following representations, which shall survive any closing hereunder.

(A) Rampart Utilities, Inc. is a corporation duly organized, validly existing in and good standing in the State of Florida, authorized to do business in such jurisdiction and has all requisite corporate power and authority to enter into and fully perform this Agreement. All of the shares of Rampart Utilities, Inc. are equitably owned and controlled by decree of the court by those individuals identified in subparagraph 89(f) of the final Order on Count 1 of Fifth Amended Complaint of Accounting and Dissolution of Maple Leaf, Ltd., Case No. 93-17311 (04) in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, and Theodore Steffens is the duly appointed receiver in such action.

(B) All necessary corporate action on the part of Rampart relating to the direction and authorization for execution, delivery and performance of this Agreement have been or will be duly taken prior to closing, and this Agreement will be valid and enforceable against Rampart, in accordance with its terms. Such required corporate action shall include obtaining appropriate orders from the court in Case No. 93-17311 (04) in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County authorizing and approving the transactions contemplated herein.

(C) Except for Case No. 93-17311 (04) in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, there is no action, suit, investigation, or proceeding pending or, to Rampart's knowledge and belief, threatened against or affecting Rampart, at law or in equity or before any federal, state, municipal, or other governmental department, commission, board, bureau, agency or instrumentality, wherein any decision,

ruling or finding would adversely affect the transactions contemplated hereby or which in any way would adversely affect the validity of this Agreement or any other agreement or instrument to which Rampart is a party which is used or contemplated for use in the consummation of the transactions contemplated hereby. The court in Case No. 93-17311(04) has directed and authorized the sale of the Purchased Assets, and Rampart reasonably believes it can timely obtain all necessary further orders from the court to confirm and authorize the execution hereof and the sale and transfer of the Purchased Asset free and clear of all encumbrances or secured interests, subject only to the Permitted Exceptions.

(D) To the best of Rampart's knowledge and belief, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated, nor compliance with the terms and provisions of such instruments will violate the provisions of any applicable law or any applicable order or regulation of any judicial or governmental authority having jurisdiction over Rampart and will not conflict with or result in a material breach of any terms, conditions or provisions of any agreement or instrument to which Rampart is now a party, or constitute a default thereunder.

(E) To the best of Rampart's knowledge and belief, Rampart has good and marketable title to the Purchased Assets and, at closing Rampart shall have the power and authority to deliver sole and exclusive possession of the Purchased Assets to the County free and clear of all encumbrances or secured interests, subject only to the Permitted Exceptions.

(F) Rampart has not dealt with any broker, salesman or finder in connection with the transactions contemplated herein and no sales commissions or finder's fees are due or payable as a result hereof.

(G) To the best of Rampart's knowledge and belief, Rampart possesses an enforceable interest in all Easements used by it in providing water or wastewater utility services at the time of execution hereof and none of such easement interests prohibit assignment or require the grantor's, or current fee owner's, consent to an assignment to the County.

(H) To the best of Rampart's knowledge and belief, no present possessory interest in any real or personal property used by Rampart as of the date of execution hereof has automatically terminated or reverted to the grantor thereof as a result of any failure to continuously use such property for water or wastewater utility purposes; nor is Rampart aware of any claim, whether actual or threatened, of any such reversion.

(I) Within five (5) days after executing this Agreement, Rampart will and has the ability to prepare, complete, and deliver to the County the following Appendices without qualification:

(1) Appendix A shall be a schedule providing a complete legal description or recording references for all real property or real property interests owned by Rampart and used in the operation of the Utility System and the Purchased Assets.

(2) Appendix B shall be a schedule of all plans and specifications presently available to Rampart which describe portions of the Utility System's water and



wastewater plants, lift or pump stations, wastewater collection system, water distribution system and major transmission, disposal and reuse facilities.

(3) Appendix C shall be a schedule of all existing third party warranties, if any, that relate to completed or in-progress construction.

(4) Appendix D shall be a schedule of all current or active permits, applications or other documents, together with effective dates and any expiration dates which authorize the operation of the Utility System's water and wastewater treatment facilities by all applicable governmental authorities.

(5) Appendix E shall be a general inventory of the known equipment, vehicles, tools, parts, laboratory equipment, computer equipment, supplies on hand, and other personal property, other than the Excluded Assets, used by Rampart in connection with the operation of Utility System.

(6) Appendix F shall be a schedule of all known operating and vendor contracts affecting the Utility System.

(7) Appendix G shall be a schedule of all executory reuse or effluent disposal agreements, if any, entered into by Rampart, or its predecessors, for sale or reuse of effluent delivered through the Utility System.

(8) Appendix H shall be a schedule of all executory agreements, if any, sometimes referred to as developer agreements, entered into by Rampart, or its predecessors, and owners or developers of real property for the provision of water or wastewater disposal services through the Utility System.

(9) Appendix I shall be a schedule, with respect to all executory agreements, if any, under which Rampart as the owner of the Utility System has any continuing or outstanding water or wastewater service obligations as of the date of execution hereof, which shows the total number of known (a) contractual connections; (b) contractual connections paid for and not yet connected; (c) contractual connections not yet paid for and not yet connected; and (d) any contractual connections for which Rampart has or expects to begin collecting a periodic minimum or base charge prior to closing

(10) Appendix J shall be a schedule of all other agreements, if any, entered into between Rampart, its predecessors, or third parties which would reasonably be considered to be an encumbrance upon the Purchased Assets, including without limitation, any leasehold agreements or oral agreements, if any. If any oral agreements exist, they shall be so identified by Rampart on said schedule with a narrative of the terms thereof included therein.

(11) Appendix K shall be a schedule of all current tariffs and collectively represent the most current schedule of rates, fees and charges that Rampart is authorized to impose.

(J) From and after the date of the execution of this Agreement, Rampart will not, without the prior written consent of the County, dispose of or encumber any of the Purchased Assets, with the exception of non-material transactions occurring in the ordinary course of Rampart 's business.

(K) From and after the date of the execution of this Agreement, there will be no material depletion of the Purchased Assets, nor any adverse material change in the

condition of the Purchased Assets, and the Utility System and all of the Purchased Assets will be properly maintained within the custom and usage of the industry up until and through closing.

(L) To the best of Rampart's knowledge and belief, Rampart has not been cited nor notified, and is not, after due inquiry, aware of any violation of any governmental rule, regulation, permitting condition, or other governmental requirement of any type or nature applicable to the ownership, maintenance, construction or operation of the Utility System, nor is Rampart aware of any conditions which by reason of the passing of time or the giving of notice by the appropriate governmental agency would constitute such a violation.

(M) No employment contract exists under which Rampart is the employer that cannot be canceled within 30 days notice or less and without payment of any consideration of such cancellation.

(N) To the best of Rampart's knowledge and belief, the subject water and wastewater plants, facilities and appurtenances are located on real property which has been zoned by appropriate authorities under zoning certifications, special exceptions or variances which will permit the respective use of such parcels for water and wastewater utility purposes.

(O) To the best of Rampart's knowledge and belief, the real property or real property assets, and Easement or property use rights to be conveyed to the County hereunder are in compliance with, and Rampart has not violated, in connection with its ownership, use, maintenance, or operation of the Utility System, applicable environmental, federal, state, county, or local laws relating to pollution or protection of the environment,

including but not limited to, the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, and the Resource Conservation and Recovery Act. To the best of Rampart's knowledge and belief, neither Rampart nor its employees or agents have authorized the placing or depositing of hazardous substances on such real property interests to be conveyed to the County except, if at all, in accordance with applicable law, and Rampart has no actual knowledge of any hazardous substance having been, or currently being, placed or deposited on any such real property interests except in a lawful manner.

(P) There are no facts actually known to Rampart materially affecting the physical condition of the Utility System or Purchased Assets which are not readily observable and which have not been disclosed or provided to the County in connection with this transaction or otherwise.

### ARTICLE III

#### PURCHASE AND SALE OF ASSETS

**SECTION 3.01. PURCHASE AND SALE COVENANT.** At closing, the County shall purchase and Rampart shall sell and convey the Purchased Assets to the County upon the terms and subject to the conditions set forth in this Agreement.

#### **SECTION 3.02. PURCHASED ASSETS.**

(A) The Purchased Assets, exclusive of the Excluded Assets, shall include those assets, business properties, and rights both tangible and intangible, that Rampart owns or uses in conjunction with the operation of the Utility System, or any ownership interest which it has or hereafter acquires, relating thereto, including the following:

(1) All real property and interests, whether recorded in the public records or not, in real property owned, used or controlled by Rampart in Charlotte County, Florida, as and to be supplementally described in Appendix A hereof.

(2) All water and wastewater facilities owned by Rampart, including reuse and reclaimed water, treatment plants, wells, collection, transmission, distribution, pumping, effluent and disposal facilities of every kind and description whatsoever including without limitation, all trade fixtures, leasehold improvements, lift stations, pumps, generators, controls, tanks, distribution, collection or transmission pipes or facilities, valves, meters, service connections, and all other physical facilities and property installations used in the operation of the Utility System, together with an assignment of all existing and assignable third party warranties that relate to completed or in progress construction.

(3) All equipment, vehicles, tools, parts, laboratory equipment, supplies on hand, and other personal property owned or used by Rampart in connection with the operation of the Utility System to be more particularly described in Appendix E of this Agreement.

(4) All Easements in favor of Rampart or its predecessors in interest to the Utility System.

(5) All current customer records and supplier lists, as-built surveys and water and wastewater plans, plats, engineering and other drawings, designs, blueprints, plans and specifications, maintenance and operating manuals, engineering reports, calculations, computer models and studies, accounting, budget and business records and all other information owned or reasonably available to Rampart that relates to the description and operation of the Utility System, inclusive of all pertinent computer records and the lawful use of all computer software which is or was used in the operation of the Utility System for billing or customer record keeping purposes, including but not limited to the lawful use of any licensed software or proprietary software developed for Rampart. If available, all information referred to in this subsection (A)(5) shall be readily reproducible or delivered in a reproducible format.

(6) All existing regulatory approvals subject to all conditions, limitations or restrictions contained therein; all existing permits and other governmental authorizations and approvals of any kind available to Rampart to construct, operate, expand, and maintain the Utility System according to all governmental requirements, to be more specifically described in Appendix D to this Agreement.

(7) All rights and obligations of Rampart relating to the Purchased Assets or the Utility System under any existing or proposed agreements and contracts disclosed to the County herein, which are expressly assumed by the County under the terms of this Agreement and any other rights or obligations which the County, in its sole discretion, chooses to subsequently assume.

(B) The Purchased Assets shall be conveyed by Rampart to the County subject to the Permitted Exceptions, but otherwise free and clear of all liens or encumbrances.

(C) The Purchased Assets do not and shall not include the Excluded Assets. The Excluded Assets are more particularly described in Appendix L hereto.

**SECTION 3.03. PURCHASE PRICE AND CONSIDERATION FOR SALE.**

The purchase price shall be \$2,433,200, subject to the terms, adjustments and prorations as provided herein, payable by the County to Rampart in immediately available funds at closing.

## ARTICLE IV

### CONDITIONS PRECEDENT TO CLOSING

#### SECTION 4.01. PROVISION OF INFORMATION BY RAMPART.

(A) Within 5 days after entering into this Agreement, Rampart shall prepare, complete without qualification, and deliver to the County, at Rampart's expense, the information described and to be encompassed by Appendices A through K hereof, which are more particularly described in Section 2.02 (l)(1) through (11) hereof. Rampart shall timely deliver the information required to complete each respective appendix on 8 ½ x 11 inch paper with an unqualified certificate in the form attached hereto in Appendices A through K. Upon receipt of each respective certificate the County shall append the certificate and the accompanying information to this Agreement and same shall become a part hereof and be incorporated herein by reference.

(B) Rampart shall make any plans or specifications available during business hours to the County, or its representatives, for inspection.

(C) Rampart shall provide one copy (single-side) of all back-up or supporting documentation on 8 ½ x 11 inch paper (unstapled) in "3-ring" binders for all information related to the schedules in Appendices A, C, D, E, F, G, H, I, J and K. Each binder shall be separately labeled, have separately tabbed dividers and provide a table of contents. The binders shall be prepared and delivered in a fashion that is conducive to copying.



**SECTION 4.02. PUBLIC HEARING AND APPROVAL BY COUNTY COMMISSION.**

(A) Within 20 days after entering into this Agreement, the County shall schedule and hold a public hearing as required by section 125.3401 Florida Statutes. This Agreement shall be subject to approval after such hearing by the Board.

(B) The County shall assemble and consider all information required by section 125.3401, Florida Statutes, and Rampart shall cooperate in good faith in such endeavor.

**SECTION 4.03. TITLE VERIFICATION.**

(A) Using public information believed to be accurate, the County has already ordered a title search of lands expected to be identified in Appendix A. Within 3 days after receiving notice of execution of this Agreement by Rampart, the County shall obtain a title certificate or commitment for an appropriate ALTA form title insurance policy. Time permitting, the title research information shall be delivered to the County, with a copy to Rampart, not less than 15 days prior to the closing as provided for in Section 5.09(A) hereof. Subject to subsection (E) of this section, any encumbrances or defects in title must be removed from any title insurance commitment prior to closing and the subsequent title insurance policy issued free and clear of encumbrances, title defects, materialman's liens or other adverse matters, created or potentially created by Rampart, with the exception of (1) taxes for the current year which are not yet due and payable, (2) the Permitted Exceptions reflected in the schedule attached hereto as Appendix M, and (3) any encumbrance of or created by the County, including any instruments evidencing debt executed by the County at closing.

(B) The estate or interests to be insured by any title insurance policy shall consist of all interests in real property and insurable Easements identified herein or otherwise identified and included within any endorsement to a title insurance commitment within 180 days of closing.

(C) At closing or upon issuance of any title insurance policy after closing, the owner's title insurance policy shall show marketable title to the insured estate or interests vested in the County. All charges for the issuance of the owner's title insurance commitment and policy shall be the County's expense.

(D) The County shall select a title insurer willing to issue the owner's title insurance policy for a premium which shall not exceed the minimum rate promulgated by the Florida Insurance Commissioner. This premium shall also be the County's expense. Nothing herein shall preclude the County from selecting its own counsel to act as an agent for the title insurer in conjunction with the issuance of the title insurance policy.

(E) Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law. The County shall have 5 days from receiving the title commitment or any endorsement thereto to examine it. If title is found defective or the title commitment reflects title exceptions other than those shown on the schedule attached hereto as Appendix M, the County shall thereafter within 5 days, notify Rampart in writing specifying the defects. If the defects render the title unmarketable, Rampart shall, time permitting, have no more than 30 days from receipt of notice within which to remove the defects, failing which the County shall have the option of either (1) opting to close notwithstanding the defect or (2) canceling this Agreement

prior to closing, thereupon the County and Rampart shall release one another of all further obligations hereunder.

(F) Within 3 days after receiving notice of execution of this Agreement by Rampart, the County shall order a search of the Official Records of Charlotte County, Florida and the records of the Secretary of State for uniform commercial code financing statements evidencing a secured interest in the Purchased Assets. Such search shall be the County's expense. Time permitting, the results of such a search shall be delivered to the County, with a copy to Rampart, not less than 15 days prior to closing. Any secured interests in the Purchased Assets must be paid off, released or terminated at Rampart's expense. In the event all secured interests in the Purchased Assets are not paid off, released or terminated at or prior to closing, the County shall have the option of either (1) opting to close notwithstanding such secured interest or (2) canceling this Agreement prior to closing, thereupon the County and Rampart shall release one another of all further obligations hereunder.

**SECTION 4.04. TRANSFER OF PERMITS.** Within 3 days after the approval and confirmation of this Agreement by the County Commission, Rampart shall commence all requisite action to apply for and cause the transfer of the permits, certificates and governmental approvals described in Appendix D hereof, including, but not limited to the procedures referenced in Rule 62-4.120, Florida Administrative Code (1990), 40 C.F.R. § 122.63(d) (1990), 47 C.F.R. § 73.1 et seq. (1998) and section 367.07, Florida Statutes, shall use all reasonable efforts to obtain the transfer of such permits. The County shall timely cooperate and provide all reasonably necessary assistance in this endeavor. Upon

transfer, the County shall assume all obligations under the permits and governmental approvals necessary for the continued operation of the Utility System.

**SECTION 4.05. DEADLINE TO CLOSE AND DISBURSE.**

Closing is expected to occur 25 days after notice of acceptance and execution by Rampart, appropriate order of the court, and provision by Rampart to the County of the information and certificates identified in Section 2.02 (I) and Section 4.01 hereof. However, notwithstanding any other provision in this Agreement, closing and disbursement to Rampart of the purchase price described in Section 3.03, subject to the terms, adjustments and prorations as provided herein, shall occur on or before 35 days after notice of acceptance and execution by Rampart, appropriate order of the court, and provision by Rampart to the County of the information and certificates identified in Section 2.02 (I) and Section 4.01 hereof or Rampart shall have the option, provided Rampart shall have timely and substantially performed in good faith as provided herein, of (1) waiving this condition precedent to closing or (2) canceling this Agreement, thereupon the County and Rampart shall release one another of all further obligations hereunder. Any notice of acceptance and execution by Rampart must include original execution of this agreement and a certified copy of the motion and order of the court in substantially the form as provided in Appendix N hereto.

## ARTICLE V

### CLOSING PROCEDURES

#### SECTION 5.01. CLOSING DATE AND PLACE.

(A) It is anticipated that the transactions contemplated by this Agreement will be closed on a mutually agreed upon date between February 23, 1999 and March 16, 1999. The time for closing may be extended by the County to no later than 35 days after notice of acceptance and execution by Rampart, appropriate order of the court, and provision by Rampart to the County of the information and certificates identified in Section 2.02 (I) and Section 4.01 hereof. However, in any event, closing shall be extended and subject to the approval of the court as contemplated in appendix N hereof. The closing shall be held at such place or offices designated by the County.

#### SECTION 5.02. DOCUMENTS FOR THE CLOSING.

(A) Rampart shall execute at closing a certificate reaffirming Rampart's representations and warranties hereunder; and Rampart shall furnish a non-foreign affidavit, a no-lien affidavit, a "gap" affidavit, a deed (if required by County or its insurer, but without any warranty of title for anyone other than persons claiming by, through or under Rampart if a specific parcel or interest is discovered as a result of a title search), and the bill of sale, all in substantially the form attached hereto as Appendix N. Rampart shall also obtain the appropriate court orders authorizing the transaction contemplated herein and execute at closing any necessary assignments, estoppel letters, releases, satisfactions, terminations and any corrective instruments, and enter into a transfer,

assignment and assumption agreement in substantially the form attached hereto in Appendix N.

(B) The County shall furnish at closing the closing statement, a certificate reaffirming the County's representations and warranties hereunder, and enter into a transfer, assignment and assumption agreement in substantially the form attached hereto in Appendix N.

(C) From time to time after closing, each party hereto shall, upon request of the other, execute, acknowledge and deliver, or shall cause to be executed, acknowledged and delivered, all such further acts, deeds, assignments, transfers or other documentation for (1) confirming or correcting title in the name of the County or perfecting undisputed possession by the County of any or all of the Purchased Assets, including the establishment of record of Easements reasonably capable of enforcement by the County, without resort to litigation or other extraordinary means by Rampart, for all water and wastewater utility facilities which are a part of the Utility System and in existence or use at the time of closing, or (2) otherwise fulfilling the obligations of the parties hereunder.

**SECTION 5.03. RECORDING FEES AND DOCUMENTARY TAXES.**

(A) Recording fees to record the deed and any other instruments necessary to deliver marketable title to the County shall be paid by the County.

(B) The Purchased Assets shall be deemed to be purchased by the County for public purposes in lieu of eminent domain and condemnation by Charlotte County, Florida and therefore this transaction is immune from documentary stamp tax, in accordance with the ruling in Orange County v. Department of Revenue, 605 So.2d 1333 (Fla. 5th DCA

1992). The purchase price and consideration being given by the County hereunder constitutes the total consideration to be paid or given by the County in connection with the acquisition of the Purchased Assets and any consequences or impacts incurred by Rampart in connection therewith. Such consequences or impacts shall include, without limitation, any severance damages, loss of business damages or impacts or costs to Rampart or any person or entity affiliated with Rampart.

**SECTION 5.04. PROPERTY TAXES.** All taxes on the Purchased Assets shall be prorated as of the day of closing and, if necessary, Rampart shall be required to escrow with the Tax Collector of Charlotte County, Florida such prorated taxes in accordance with section 196.295, Florida Statutes.

**SECTION 5.05. ACCOUNTS RECEIVABLE.**

(A) All accounts receivable due Rampart which are 60 days or less past due at closing and all unbilled revenue earned for water and wastewater service as of the date of closing shall be estimated and credited to Rampart at closing. For estimation purposes, Rampart shall furnish to the County, 15 days prior to the closing, a listing of its aged accounts receivable (including name and address information) and unbilled revenue, by customer and individual accounts. At closing, Rampart shall assign to the County all interest in any accounts receivable which are not more than 60 days past due on the date of closing.

(B) Credit shall be given to the County at closing for the liabilities assumed for customer deposits or unused application fees or charges, including any interest due thereon through the date of closing. Rampart shall furnish to the County, 15 days prior to

closing and at closing, (1) a listing of current customers, (2) a listing of customer deposits by customer account (including name and address information) and an aggregate total thereof, and (3) a listing of all unexpended application fees or charges (including the name and address of the applicant and identification of the agreement under which the fee was collected or charged, if any) and an aggregate total thereof.

(C) Closing may occur during the normal billing cycle of Rampart. Gross revenues for water and wastewater services rendered but not yet billed shall be estimated based upon the preceding month's billings and a proration of such revenue shall be made with a credit to Rampart at closing for the number of days elapsed in the current billing cycle. Upon credit to Rampart for unbilled service at closing as provided for herein, the County shall be entitled to all revenue collected and derived from the Utility System and Purchased Assets from that date forward.

(D) In lieu of the adjustment procedure for accounts receivable contemplated under the foregoing provisions of this section, Rampart and the County may opt to use another mutually agreeable reconciliation approach on or immediately before closing.

#### **SECTION 5.06. CONNECTION CHARGES.**

(A) Sums collected by Rampart in the ordinary course of business for connection charges, including capacity and deferred standby fees, prior to the date of closing, which sums do not impose any liability on Charlotte County, shall remain Rampart's sole and separate property with no claim of the County therefore. Rampart agrees that other than what may be provided in that certain Settlement Agreement between the County, Rampart, the Bank of Tokyo Trust Company, H.K. Victoria Estates, Inc., Hugh Keith, Jean Keith and



Theodore C. Steffens, as Receiver for Rampart, there are no known connection or hook-up fees collected by Rampart which subject or will subject the County to any claim for water or wastewater services upon closing. With regard to said Settlement Agreement, Rampart agrees that it will fully satisfy any claim or lien the Bank of Tokyo Trust Company, or its successors, possess from the proceeds of this sale and that such payment shall satisfy and extinguish any obligations or any liabilities of Charlotte County or Rampart which relate to the Settlement Agreement or any obligation, lien or indebtedness arising therefrom. Sums collected by Rampart in the ordinary course of business for connection charges, including capacity and deferred standby fees, for which water service has been actually furnished or contracted for prior to closing shall be addressed in accordance with the existing bulk water service agreement between the County and Rampart.

(B) All sums collected from and after the date of closing relative to the use of, or connection to, the Utility System shall be paid to the County, with no claim of Rampart therefore.

(C) From and after the day of execution of this Agreement, Rampart has not and shall not enter into any agreement, without the prior written consent of the County, which would obligate the County to provide service upon closing to any customer who was not physically connected to the Utility System prior to January 1, 1999. The County shall not unreasonably withhold its consent provided such agreement does not provide for payment of any charges, rates or fees, other than refundable inspection or application fees, prior to physical connection to the Utility System.

**SECTION 5.07. PROFESSIONAL FEES; COSTS.**

(A) Each party shall be responsible for securing its own counsel for representation relative to the negotiation of this Agreement, and all other matters associated with performance, cancellation or closing hereunder; unless otherwise specified herein, and each party shall be responsible for the payment of the fees of its own attorneys, bankers, engineers, accountants, and other professional advisors or consultants in connection therewith.

(B) In any litigation arising out of this Agreement, the prevailing party in such litigation shall be entitled to recover reasonable attorney's fees and such reasonable costs and expenses as are awarded by a court of competent jurisdiction.

**SECTION 5.08. RISK OF LOSS.** At all times prior to and through the day of closing, Rampart shall be responsible for the cost of any repairs to the Purchased Assets that may be required by casualty damage. The risk of loss during the said period of time shall fall upon Rampart. The risk of loss shall pass to the County at closing.

**SECTION 5.09. PROCEEDS OF SALE; CLOSING PROCEDURE.**

(A) Rampart and the County shall execute and place all documents necessary to close in escrow prior to closing.

(B) No less than 3 days prior to the closing date identified by the County, Rampart and the County shall diligently exchange copies of all documents for closing. Notwithstanding any other provision here of closing shall be extended for each day less than all documents reasonably required for closing are not timely exchanged or provided.

(C) Rampart shall execute and tender the following documents effecting the transfer of the Purchased Assets to the County at the escrow closing; these documents shall be in final form, together with any exhibits or appendices thereto:

(1) A deed for the conveyance of any real property interests to be conveyed hereunder (if required by County or its insurer, but without any warranty of title for anyone other than persons claiming by, through or under Rampart if a specific parcel or interest is discovered as a result of a title search);

(2) Conveyance instruments for all easements;

(3) A transfer, assignment and assumption agreement covering all other interests in the Purchased Assets, together with a general assignment of all contracts, agreements, permits and approvals as provided for herein;

(4) Bill of Sale or other documents of assignment and transfer to all Purchased Assets;

(5) A Florida Department of Revenue Form DR-219 completed in a manner satisfactory to the County and executed by Rampart;

(6) Any affidavits, certificates, estoppel certificates, corrective instruments, releases, satisfactions or terminations necessary to close which are reasonably required by the County or its title insurer in good faith; and

(7) The original or a copy of all permits, governmental authorizations and approvals.

(D) Within 60 days after closing, upon written request by the County, Rampart shall reimburse the County or pay a prorata portion of any charge, fee or rate for services

furnished to the Utility System through the date of closing for water, sewer, power, telephone, solid waste collection, pest control, sludge hauling or general maintenance and reconcile any connection charges, accounts receivables, customer deposits or unexpended application fees or other charges not otherwise considered or accounted for at the time of closing. Within 60 days after closing, upon written request by Rampart , the County shall reimburse Rampart or pay a prorata portion of any charge, fee or rate for services furnished to the Utility System through the date of closing for water, sewer, power, telephone, solid waste collection, pest control, sludge hauling or general maintenance and reconcile any connection charges, accounts receivables, customer deposits or unexpended application fees or other charges not otherwise considered or accounted for at the time of closing. Such post-closing reimbursement and reconciliation process may be extended by either party for 30 days upon written notice to the other party.

## ARTICLE VI

### GENERAL PROVISIONS

#### SECTION 6.01. RIGHT TO ENTER.

(A) Prior to closing, the County shall have the right, at any reasonable time with prior notice to Rampart, to enter upon Rampart's property to inspect the Utility System and the Purchased Assets, to familiarize itself with day-to-day operations, to review the operational practices of Rampart, and to ensure compliance with any and all federal and state regulatory requirements.

(B) The County shall have the right to cause an environmental assessment of the real property on which the Purchased Assets are located. The environmental assessment shall be in general accordance with the scope and limitations of the American Society for Testing and Materials Designation: E 1527-97 (Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process). Any such environmental assessment, together with a written declaration from an environmental consultant, shall verify that said real property, and the facilities to be conveyed hereunder, appear to be in compliance with all applicable state and federal environmental laws, and that the facilities and property surrounding the facilities are free of unlawful contamination and, if necessary, provide an itemized estimate of all costs associated with bringing the subject real property and facilities into compliance and the response cost for clean-up, removal and remediation. If requested, the environmental consultant shall demonstrate its qualifications to the satisfaction of Rampart. The environmental consultant's qualifications shall be presumptively established if the project manager is a professional engineer who is

registered and in good standing with the State of Florida, or a certified environmental professional by the National Association of Environmental Professionals or some other like national professional organization. The environmental assessment shall be the County's expense.

(C) The County shall have the option to order a survey of any or all property being insured by the title insurance policies hereunder. Such survey shall be the County's expense.

**SECTION 6.02. CONDUCT BETWEEN EXECUTION AND CLOSING.**

(A) Upon the execution of this Agreement, Rampart shall continue to provide water and wastewater treatment to its current customers in the ordinary and usual manner.

(B) Rampart shall prudently maintain the Utility System to ensure its proper operation through closing.

(C) From and after the date of the execution of this Agreement, Rampart shall not, without prior written consent of the County, dispose of or encumber any of the Purchased Assets, except any non-material transactions that occur in the ordinary course of Rampart's business.

(D) From and after the date of the execution of this Agreement, Rampart shall not, without prior written consent of the County, (1) enter into or modify any effluent reuse or disposal agreements affecting the Utility System or (2) enter into or modify any developer, water, or wastewater service agreement affecting the Utility System.

**SECTION 6.03. TIME IS OF THE ESSENCE.** Time is of the essence in this Agreement. Time periods specified in this Agreement shall expire at midnight on the date

stated unless the parties agree in writing to a different date or time. Any time period provided for herein which ends on Saturday, Sunday or a legal holiday shall extend to 5:00 p.m. on the next business day.

**SECTION 6.04. APPLICABLE LAW; JURISDICTION AND VENUE.**

(A) This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

(B) The parties to this Agreement expressly consent to the jurisdiction of and agree to suit in any court of general jurisdiction in the State of Florida, whether state, local or federal, and further agree that venue shall lie in Broward County, Florida.

**SECTION 6.05. FAILURE OF PERFORMANCE.**

(A) A breach of this Agreement shall mean a material failure to comply with any of the provisions of this Agreement. If any party breaches any obligation herein, then, upon receipt of written notice by the non-breaching party, the breaching party shall proceed diligently and in good faith to take all reasonable actions to cure such breach and shall continue to take all such actions until such breach is cured.

(B) Unless otherwise provide herein, the parties to this Agreement may proceed at law or in equity to enforce their rights under this Agreement.

**SECTION 6.06. NOTICE.**

(A) All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, to the parties at the following addresses:

**To the County:**

Richard E. Howell  
Utility Director Charlotte County  
20101 Peachland Boulevard  
Suite 301  
Port Charlotte, Florida 33948

with a copy to:

Reneé Francis Lee, County Attorney, and  
Kathleen W. Errett, Consulting Attorney  
Office of the County Attorney  
18500 Murdock Circle  
Port Charlotte, Florida 33948-1094

with another copy to:

Mark G. Lawson  
Nabors, Gilblin & Nickerson, P.A.  
315 S. Calhoun Street  
Suite 800  
Tallahassee, Florida 32301

**To Rampart:**

Theodore Steffens, in care of  
Jeffrey Russell  
Abel, Band, Russell, Collier, Pitchford & Gordon  
Huntington Plaza  
240 South Pineapple Avenue, 7<sup>th</sup> Floor  
P.O. Box 49948  
Sarasota, Florida 34230-6948

with a copy to:

Larry E. Metz  
Herzfeld & Rubin  
5310 NW 33<sup>rd</sup> Avenue  
Suite 102  
Ft. Lauderdale, Florida 33309



with another copy to:

James D. Wing  
Holland & Knight  
701 Brickell Avenue  
Miami, Florida 33131

with another copy to:

Gerald V. Walsh  
9500 NW 37<sup>th</sup> Court  
Coral Springs, Florida 33065-1623

with another copy to:

Thomas A. Cloud  
Gray Harris & Robinson, P.A.  
201 East Pine Street  
Orlando, Florida 32801

(B) Any written notice given to one person in subsection (A) of this section shall also be copied and provided to all other persons identified in subsection (A).

(C) The parties may, by notice in writing given to the others, designate any future or different addresses to which the subsequent notices, certificates or other communications shall be sent. Any notice shall be deemed given on the date such notice is delivered by hand or by facsimile transmission or 5 days after the date mailed.

**SECTION 6.07. ASSIGNMENT AND JOINDER.**

Except as expressly provided for herein, neither Rampart nor the County shall have the power or authority to assign this Agreement or any of their rights, duties or obligations hereunder to a third party and this Agreement shall be construed as solely for the benefit

of the County and Rampart, and their successors by law, and no claim or cause of action shall accrue to or for the benefit of any other third party by reason hereof.

**SECTION 6.08. AMENDMENTS AND WAIVERS.** No amendment, supplement, modification or waiver of this Agreement shall be binding upon any party hereto unless executed in writing by such party. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision of this Agreement, whether or not similar, unless otherwise expressly provided.

**SECTION 6.09. ENTIRE AGREEMENT.**

(A) The County acknowledges that Theodore Steffens in executing this Agreement is acting solely in the capacity as a court appointed receiver, and is not acting individually. The County expressly acknowledges that the execution hereof as directed by the court, shall not subject the receiver to any personal liability in connection with the sale and purchase of the Purchased Assets or for any warranties or representations made hereunder.

(B) This Agreement is the entire agreement between the parties and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions of the agreements, understandings, negotiations and discussions of the parties, whether oral or written, pertaining to the subject matter hereof, and there are not warranties, representations or

February 26, 1999


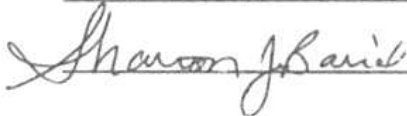
other agreements between the parties in connection with the subject matter hereof, except as specifically set forth herein. Upon execution by all parties, the County shall provide Rampart three complete certified copies of this Agreement, together with copies of all appendices hereto.

IN WITNESS WHEREOF, the County and Rampart have caused this Agreement to be duly executed and entered into on the date first above written.

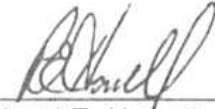
**RAMPART UTILITIES, INC.**  
a Florida corporation

By:   
Theodore Steffens, as receiver,  
and not individually.

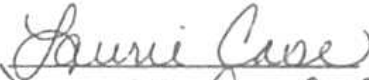

WITNESSES:

**CHARLOTTE COUNTY, FLORIDA**

By:   
Richard E. Howell  
Utility Director

WITNESSES:

**APPROVAL AND CONFIRMATION**

This Rampart Utility System Asset Acquisition Agreement has been approved and confirmed by the County Commission after public hearing on March \_\_, 1999.

BOARD OF COUNTY COMMISSIONERS  
OF CHARLOTTE COUNTY, FLORIDA

(SEAL)

By: \_\_\_\_\_  
Mac V. Horton  
Chairman

ATTEST:

Barbara T. Scott, Clerk of the  
Circuit Court and Ex-officio Clerk  
of the Board of County Commission  
of Charlotte County, Florida

By: \_\_\_\_\_  
Deputy Clerk

Approved as to form  
and legal sufficiency:

By: \_\_\_\_\_  
Reneé Francis Lee  
County Attorney

**APPENDIX A**

**REAL PROPERTY TO BE CONVEYED TO THE COUNTY**

**CERTIFICATE PROVIDING APPENDIX A**

**WHEREAS**, Charlotte County, Florida, a political subdivision of the State of Florida (the "County"), and Rampart Utilities, Inc., a Florida corporation, entered into that certain Rampart Utility System Asset Acquisition Agreement on the \_\_\_ day of March, 1999 (the "Agreement"); and

**WHEREAS**, Section 2.02(l) of the Agreement provides that Rampart deliver a certificate to the County which certifies that all of the information required by Sections 2.02(l) and 4.01 of the Agreement have been timely provided without qualification, and upon such delivery to the County, such information shall comprise Appendix A to the Agreement.

**NOW, THEREFORE**, to comply with Sections 2.02(l) and 4.01 of the Agreement, Rampart does hereby certify to the County the following:

1. The attached information is provided in compliance with Section 2.02(l)(1) of the Agreement and is a schedule providing a complete legal description or recording references for all real property owned by Rampart and used in the operation of the Utility System and the Purchased Assets.
2. That Rampart has performed in all material respects all of its obligations to provide the attached information; however, in the event it is discovered or disclosed that such information is incomplete or inaccurate, Rampart will timely complete, correct and supplement such information and notify the County of same in writing.

**IN WITNESS WHEREOF**, Rampart has executed this certificate as of this \_\_\_ day of \_\_\_\_\_, 1999.

**[EXECUTIONS TO COME]**

**APPENDIX B**  
**SCHEDULE OF PLANS AND SPECIFICATIONS**

**CERTIFICATE PROVIDING APPENDIX B**

**WHEREAS**, Charlotte County, Florida, a political subdivision of the State of Florida (the "County"), and Rampart Utilities, Inc., a Florida corporation, ("Rampart") entered into that certain Rampart Utility System Asset Acquisition Agreement on the \_\_\_ day of March, 1999 (the "Agreement"); and

**WHEREAS**, Section 2.02(l) of the Agreement provides that Rampart deliver a certificate to the County which certifies that all of the information required by Sections 2.02(l) and 4.01 of the Agreement have been timely provided without qualification, and upon such delivery to the County, such information shall comprise Appendix B to the Agreement.

**NOW, THEREFORE**, to comply with Sections 2.02(l) and 4.01 of the Agreement, Rampart does hereby certify to the County the following:

1. The attached information is provided in compliance with Section 2.02(l)(2) of the Agreement and is a schedule of all plans and specifications available to Rampart which substantially describe the Utility System's water and wastewater plants, lift or pump stations, wastewater collection system and major transmission and reuse facilities.
2. That Rampart has performed in all material respects all of its obligations to provide the attached information; however, in the event it is discovered or disclosed that such information is incomplete or inaccurate, Rampart will timely complete, correct and supplement such information and notify the County of same in writing.

**IN WITNESS WHEREOF**, Rampart has executed this certificate as of this \_\_\_ day of \_\_\_\_\_, 1999.

**[EXECUTIONS TO COME]**



**APPENDIX C**

**SCHEDULE OF THIRD PARTY WARRANTIES  
RELATED TO COMPLETED OR IN PROGRESS CONSTRUCTION**

**CERTIFICATE PROVIDING APPENDIX C**

**WHEREAS**, Charlotte County, Florida, a political subdivision of the State of Florida (the "County"), and Rampart Utilities, Inc., a Florida corporation, ("Rampart"), entered into that certain Rampart Utility System Asset Acquisition Agreement on the \_\_\_ day of March, 1999 (the "Agreement"); and

**WHEREAS**, Section 2.02(I) of the Agreement provides that Rampart deliver a certificate to the County which certifies that all of the information required by Sections 2.02(I) and 4.01 of the Agreement have been timely provided without qualification, and upon such delivery to the County, such information shall comprise Appendix C to the Agreement.

**NOW, THEREFORE**, to comply with Sections 2.02(I) and 4.01 of the Agreement, Rampart does hereby certify to the County the following:

1. The attached information is provided in compliance with Section 2.02(I)(3) of the Agreement and is a schedule of all existing third party warranties that relate to completed or in-progress construction.
2. That Rampart has performed in all material respects all of its obligations to provide the attached information; however, in the event it is discovered or disclosed that such information is incomplete or inaccurate, Rampart will timely complete, correct and supplement such information and notify the County of same in writing.

**IN WITNESS WHEREOF**, Rampart has executed this certificate as of this \_\_\_ day of \_\_\_\_\_, 1999.

**[EXECUTIONS TO COME]**

**APPENDIX D**  
**SCHEDULE OF PERMITS**

**CERTIFICATE PROVIDING APPENDIX D**

**WHEREAS**, Charlotte County, Florida, a political subdivision of the State of Florida (the "County"), and Rampart Utilities, Inc., a Florida corporation, ("Rampart") entered into that certain Rampart Utility System Asset Acquisition Agreement on the \_\_\_ day of March, 1999 (the "Agreement"); and

**WHEREAS**, Section 2.02(I) of the Agreement provides that Rampart deliver a certificate to the County which certifies that all of the information required by Sections 2.02(I) and 4.01 of the Agreement have been timely provided without qualification, and upon such delivery to the County, such information shall comprise Appendix D to the Agreement.

**NOW, THEREFORE**, to comply with Sections 2.02(I) and 4.01 of the Agreement, Rampart does hereby certify to the County the following:

1. The attached information is provided in compliance with Section 2.02(I)(4) of the Agreement and is a schedule of all current or active permits, applications or other documents, together with effective dates and any expiration dates which authorize the operation of the Utility System's water and wastewater treatment facilities by all applicable governmental authorities.
2. That Rampart has performed in all material respects all of its obligations to provide the attached information; however, in the event it is discovered or disclosed that such information is incomplete or inaccurate, Rampart will timely complete, correct and supplement such information and notify the County of same in writing.

**IN WITNESS WHEREOF**, Rampart has executed this certificate as of this \_\_\_ day of \_\_\_\_\_, 1999.

**[EXECUTIONS TO COME]**

APPENDIX E  
INVENTORY

**CERTIFICATE PROVIDING APPENDIX E**

**WHEREAS**, Charlotte County, Florida, a political subdivision of the State of Florida (the "County"), and Rampart Utilities, Inc., a Florida corporation, ("Rampart") entered into that certain Rampart Utility System Asset Acquisition Agreement on the \_\_\_ day of March, 1999 (the "Agreement"); and

**WHEREAS**, Section 2.02(l) of the Agreement provides that Rampart deliver a certificate to the County which certifies that all of the information required by Sections 2.02(l) and 4.01 of the Agreement have been timely provided without qualification, and upon such delivery to the County, such information shall comprise Appendix E to the Agreement.

**NOW, THEREFORE**, to comply with Sections 2.02(l) and 4.01 of the Agreement, Rampart does hereby certify to the County the following:

1. The attached information is provided in compliance with Section 2.02(l)(5) of the Agreement and is a general inventory of the equipment, vehicles, tools, parts, laboratory equipment, computer equipment, supplies on hand and other personal property, other than the Excluded Assets, used by Rampart in connection with the operation of Utility System.
2. That Rampart has performed in all material respects all of its obligations to provide the attached information; however, in the event it is discovered or disclosed that such information is incomplete or inaccurate, Rampart will timely complete, correct and supplement such information and notify the County of same in writing.

**IN WITNESS WHEREOF**, Rampart has executed this certificate as of this \_\_\_ day of \_\_\_\_\_, 1998.

**[EXECUTIONS TO COME]**

**APPENDIX F**

**SCHEDULE OF OPERATING AND VENDOR CONTRACTS**

**CERTIFICATE PROVIDING APPENDIX F**

**WHEREAS**, Charlotte County, Florida, a political subdivision of the State of Florida (the "County"), and Rampart Utilities, Inc., a Florida corporation, ("Rampart") entered into that certain Rampart Utility System Asset Acquisition Agreement on the \_\_\_ day of March, 1999 (the "Agreement"); and

**WHEREAS**, Section 2.02(l) of the Agreement provides that Rampart deliver a certificate to the County which certifies that all of the information required by Sections 2.02(l) and 4.01 of the Agreement have been timely provided without qualification, and upon such delivery to the County, such information shall comprise Appendix F to the Agreement.

**NOW, THEREFORE**, to comply with Sections 2.02(l) and 4.01 of the Agreement, Rampart does hereby certify to the County the following:

1. The attached information is provided in compliance with Section 2.02(l)(6) of the Agreement and is a schedule of all operating and vendor contracts affecting the Utility System.
2. That Rampart has performed in all material respects all of its obligations to provide the attached information; however, in the event it is discovered or disclosed that such information is incomplete or inaccurate, Rampart will timely complete, correct and supplement such information and notify the County of same in writing.

**IN WITNESS WHEREOF**, Rampart has executed this certificate as of this \_\_\_ day of \_\_\_\_\_, 1999.

**[EXECUTIONS TO COME]**



**APPENDIX G**

**SCHEDULE OF REUSE AND EFFLUENT DISPOSAL AGREEMENTS**

**CERTIFICATE PROVIDING APPENDIX G**

**WHEREAS**, Charlotte County, Florida, a political subdivision of the State of Florida (the "County"), and Rampart Utilities, Inc., a Florida corporation, ("Rampart") entered into that certain Rampart Utility System Asset Acquisition Agreement on the \_\_\_ day of March, 1999 (the "Agreement"); and

**WHEREAS**, Section 2.02(l) of the Agreement provides that Rampart deliver a certificate to the County which certifies that all of the information required by Sections 2.02(l) and 4.01 of the Agreement have been timely provided without qualification, and upon such delivery to the County, such information shall comprise Appendix I to the Agreement.

**NOW, THEREFORE**, to comply with Sections 2.02(l) and 4.01 of the Agreement, Rampart does hereby certify to the County the following:

1. The attached information is provided in compliance with Section 2.02(l)(7) of the Agreement and is a schedule of all executory reuse or effluent disposal agreements entered into by Rampart, or its predecessors, for sale or reuse of effluent delivered through the Utility System.
2. That Rampart has performed in all material respects all of its obligations to provide the attached information; however, in the event it is discovered or disclosed that such information is incomplete or inaccurate, Rampart will timely complete, correct and supplement such information and notify the County of same in writing.

**IN WITNESS WHEREOF**, Rampart has executed this certificate as of this \_\_\_ day of \_\_\_\_\_, 1999.

**[EXECUTIONS TO COME]**

**APPENDIX H**  
**SCHEDULE OF EXECUTORY AGREEMENTS**  
**(DEVELOPER AGREEMENTS)**

## CERTIFICATE PROVIDING APPENDIX H

WHEREAS, Charlotte County, Florida, a political subdivision of the State of Florida (the "County"), and Rampart Utilities, Inc., a Florida corporation, ("Rampart"), entered into that certain Rampart Utility System Asset Acquisition Agreement on the \_\_\_ day of March, 1999 (the "Agreement"); and

WHEREAS, Section 2.02(l) of the Agreement provides that Rampart deliver a certificate to the County which certifies that all of the information required by Sections 2.02(l) and 4.01 of the Agreement have been timely provided without qualification, and upon such delivery to the County, such information shall comprise Appendix H to the Agreement.

NOW, THEREFORE, to comply with Sections 2.02(l) and 4.01 of the Agreement, Rampart does hereby certify to the County the following:

1. The attached information is provided in compliance with Section 2.02(l)(8) of the Agreement and is a schedule of all executory agreements, sometimes referred to as developer agreements, entered into by Rampart, or its predecessors, and owners or developers of real property for the provision of water or wastewater disposal services through the Utility System.
2. That Rampart has performed in all material respects all of its obligations to provide the attached information; however, in the event it is discovered or disclosed that such information is incomplete or inaccurate, Rampart will timely complete, correct and supplement such information and notify the County of same in writing.

IN WITNESS WHEREOF, Rampart has executed this certificate as of this \_\_\_ day of \_\_\_\_\_, 1999.

[EXECUTIONS TO COME]

**APPENDIX I**

**SCHEDULE OF CONTINUING OR OUTSTANDING  
WATER AND WASTEWATER SERVICE OBLIGATIONS**

**CERTIFICATE PROVIDING APPENDIX I**

**WHEREAS**, Charlotte County, Florida, a political subdivision of the State of Florida (the "County"), and Rampart Utilities, Inc., a Florida corporation, ("Rampart") entered into that certain Rampart Utility System Asset Acquisition Agreement on the \_\_\_ day of March, 1999 (the "Agreement"); and

**WHEREAS**, Section 2.02(l) of the Agreement provides that Rampart deliver a certificate to the County which certifies that all of the information required by Sections 2.02(l) and 4.01 of the Agreement have been timely provided without qualification, and upon such delivery to the County, such information shall comprise Appendix I to the Agreement.

**NOW, THEREFORE**, to comply with Sections 2.02(l) and 4.01 of the Agreement, Rampart does hereby certify to the County the following:

1. The attached information is provided in compliance with Section 2.02(l)(9) of the Agreement and is a schedule, with respect to all executory agreements under which Rampart as the owner of the Utility System has any continuing or outstanding water or wastewater service obligations as of the date of execution of the Agreement, which shows the total number of (1) contractual connections; (2) contractual connections paid for and not yet connected; (3) contractual connections not yet paid for and not yet connected; and (4) any contractual connections for which Rampart has or expects to begin collecting a periodic minimum or base charge prior to closing.
2. That Rampart has performed in all material respects all of its obligations to provide the attached information; however, in the event it is discovered or disclosed that such information is incomplete or inaccurate, Rampart will timely complete, correct and supplement such information and notify the County of same in writing.

**IN WITNESS WHEREOF**, Rampart has executed this certificate as of this \_\_\_ day of \_\_\_\_\_, 1999.

**[EXECUTIONS TO COME]**

**APPENDIX J**

**SCHEDULE OF EXECUTORY AGREEMENTS  
(OTHER THAN DEVELOPER AGREEMENTS)**

**CERTIFICATE PROVIDING APPENDIX J**

**WHEREAS**, Charlotte County, Florida, a political subdivision of the State of Florida (the "County"), and Rampart Utilities, Inc., a Florida corporation, ("Rampart") entered into that certain Rampart Utility System Asset Acquisition Agreement on the \_\_\_ day of March, 1999 (the "Agreement"); and

**WHEREAS**, Section 2.02(I) of the Agreement provides that Rampart deliver a certificate to the County which certifies that all of the information required by Sections 2.02(I) and 4.01 of the Agreement have been timely provided without qualification, and upon such delivery to the County, such information shall comprise Appendix J to the Agreement.

**NOW, THEREFORE**, to comply with Sections 2.02(I) and 4.01 of the Agreement, Rampart does hereby certify to the County the following:

1. The attached information is provided in compliance with Section 2.02(I)(10) of the Agreement and is a schedule of all other agreements not otherwise disclosed to the County pursuant to the Agreement entered into between Rampart, its predecessors, or third parties which would reasonably be considered to be an encumbrance upon the Purchased Assets, including without limitation, any leasehold agreements or oral agreements, if any. (If any oral agreements exist, they shall be so identified by Rampart on said schedule with a narrative of the terms thereof included therein.)
2. That Rampart has performed in all material respects all of its obligations to provide the attached information; however, in the event it is discovered or disclosed that such information is incomplete or inaccurate, Rampart will timely complete, correct and supplement such information and notify the County of same in writing.

**IN WITNESS WHEREOF**, Rampart has executed this certificate as of this \_\_\_ day of \_\_\_\_\_, 1999.

**[EXECUTIONS TO COME]**



**APPENDIX K**  
**SCHEDULE OF RATES, FEES AND CHARGES**

**CERTIFICATE PROVIDING APPENDIX K**

**WHEREAS**, Charlotte County, Florida, a political subdivision of the State of Florida (the "County"), and Rampart Utilities, Inc., a Florida corporation, ("Rampart") entered into that certain Rampart Utility System Asset Acquisition Agreement on the \_\_\_ day of March, 1999 (the "Agreement"); and

**WHEREAS**, Section 2.02(l) of the Agreement provides that Rampart deliver a certificate to the County which certifies that all of the information required by Sections 2.02(l) and 4.01 of the Agreement have been timely provided without qualification, and upon such delivery to the County, such information shall comprise Appendix K to the Agreement.

**NOW, THEREFORE**, to comply with Sections 2.02(l) and 4.01 of the Agreement, Rampart does hereby certify to the County the following:

1. The attached information is provided in compliance with Section 2.02(l)(11) of the Agreement and is a schedule of all current tariffs and collectively represent the most current schedule of rates, fees and charges that Rampart is authorized to impose.
2. That Rampart has performed in all material respects all of its obligations to provide the attached information; however, in the event it is discovered or disclosed that such information is incomplete or inaccurate, Rampart will timely complete, correct and supplement such information and notify the County of same in writing.

**IN WITNESS WHEREOF**, Rampart has executed this certificate as of this \_\_\_ day of \_\_\_\_\_, 1999.

**[EXECUTIONS TO COME]**

**APPENDIX L**  
**EXCLUDED ASSETS**

## EXCLUDED ASSETS

"Excluded Assets" means those assets, business properties, rights, obligations or liabilities, both tangible and intangible, of Rampart described in this Appendix. The following Excluded Assets shall not be and are not to be sold, conveyed, transferred to or assumed by the County pursuant to the Rampart Utility System Asset Acquisition Agreement:

(A) Cash, bank accounts, notes or accounts receivable in the possession of or in favor of Rampart which are Rampart's sole property and which are not subject to refund to customers or performance by Rampart. Used in this context, the term "accounts receivable" does not include potential future income from assets considered recovery capable as a consequence of installation by Rampart of distribution, transmission, or collection lines or other facilities abutting or serving the property of customers who have not yet connected to the Utility System.

(B) Escrowed funds for payment of federal income taxes, state income taxes and other tax liabilities of Rampart for the periods through the date of closing in 1999 and for the year ending 1998 and all prior years.

(C) Any off-site leasehold interest used by Rampart to house its customer service or other administrative or business operations.

(D) The corporate name of Rampart Utilities, Inc., a Florida corporation.

(E) Unless otherwise expressly assumed by the County, all of the liabilities of Rampart, including all accounts payable and all other payables of Rampart incurred or accruing prior to closing.

(F) With respect to the period during which any employee was employed, all workers compensation claims, health insurance or other employee benefits, accrued vacation pay and sick leave, pension or retirement plan obligations or responsibilities, collective bargaining agreements or any other employment-related claims, obligations or liability related to any past or present employee of Rampart and with respect to the period during which such employees were employed by Rampart.

(G) All construction claims liability for work completed prior to closing or work in progress performed prior to closing. All construction claims liability for work undertaken by Rampart relative to any capital improvement program.

(H) Any Florida Public Service Commission regulatory assessment or other charges.

(I) All other obligations, liabilities or responsibilities of Rampart not expressly assumed by the County at closing or not otherwise expressly addressed in the

Rampart Utility System Asset Acquisition Agreement. Except for the unrecorded Lease dated June 23, 1994, between Maple Leaf Estates Homeowners Corporation and Rampart (which shall be current at closing) and the service obligations disclosed in Appendix I hereof, the County does not and shall not be required to assume any permit, approval, contract, agreement or service obligation which requires the payment or assumption by the County of any lien, encumbrance or indebtedness.

**APPENDIX M**  
**PERMITTED EXCEPTIONS**

## PERMITTED EXCEPTIONS APPENDIX M

"Permitted Exceptions" means the following title exceptions or exclusions to coverage which may appear on a title insurance commitment or policy:

(A) Any parcel or interest not the subject of a survey dated 30 days or less prior to closing, may be subject to standard exceptions of title insurance coverage concerning easements or claims of easement not shown by the public records, encroachments, overlays, boundary line disputes, or any other adverse matter which would be disclosed by an accurate survey.

(B) Any adverse ownership claim by the State of Florida by right of sovereignty to any portion of the property, including submerged, filled and artificially exposed lands and lands accreted to such lands.

(C) Any law, ordinance or governmental regulation, including, without limitation, building restrictions and zoning regulations heretofore or hereafter adopted by any municipal or other public authority.

(D) Any and all assessments becoming liens subsequent to the date of closing, and in addition, if at the date of closing the property or any part thereof shall be or shall have been affected by any assessment or assessments which are payable in installments or may be paid in installments without penalty, the County shall pay all such installments which shall become due and payable or which may be paid without penalty after the date of closing, except any installment relating to the 1998 calendar year.

(E) Taxes for 1999 and subsequent years.

(F) Unrecorded Lease dated June 23, 1994, between Maple Leaf Estates Homeowners' Corporation and Rampart which shall be current at closing.

(G) Except for the Lease in (F) above, any permit, approval, contract, agreement or service obligation disclosed in appendices D, F, G, H, I or J hereof to the extent that such permit, approval, contract, agreement or service obligation does not require payment or assumption by the County of any lien, encumbrance or indebtedness; the conveyance of the Purchased Assets to the County shall otherwise be free and clear of all liens and encumbrances and indebtedness of Rampart.

(H) Any exception appearing on a title commitment or policy which does not encumber or have any adverse material effect upon the use or ownership of the property or interest to be acquired by Charlotte County for water or wastewater utility purposes.

**APPENDIX N**  
**FORM OF DOCUMENTS FOR CLOSING**



IN THE CIRCUIT COURT OF THE  
SEVENTEENTH JUDICIAL CIRCUIT IN  
AND FOR BROWARD COUNTY, FLORIDA

CASE NO.: 93-17311 (04)

HENRY WOODS, JR. et al

Plaintiffs,

vs.

HUGH KEITH, Individually, et al

Defendants.

\_\_\_\_\_/

MOTION TO APPROVE ASSET PURCHASE AND SALE TRANSACTION PURSUANT  
TO RAMPART UTILITY SYSTEM ACQUISITION AGREEMENT BETWEEN CHARLOTTE  
COUNTY, FLORIDA, AND RAMPART UTILITIES, INC.

Plaintiffs, HENRY WOODS, JR., HENRY WOODS, SR., THOMAS WATSON,  
JAMES WATSON, HUGH STEWART, and JOHN H. STEWART (a/d/a JACK STEWART),  
by and through their undersigned counsel, hereby move the Court for an Order Approving  
an asset purchase and sale transaction pursuant to the Rampart Utility System Asset  
Acquisition Agreement between Charlotte County, Florida, and Rampart Utilities, Inc., and  
for an Order Terminating the Receivership upon closing and final reconciliation of said  
transaction, and as grounds therefor, state as follows:

1. The sale of Rampart Utilities, Inc. and/or its assets was ordered by this Court  
on March 17, 1997. On May 15, 1998, this Court entered its Final Order on Count 1 of  
Fifth amended Complaint for Accounting and Dissolution of Maple Leaf, Ltd. ("Final  
Order"), and ratified and confirmed its March 17, 1997 Order.

2. On August 28, 1998, this Court entered an Agreed Order for procedures to  
be followed for marketing and sale of Rampart Utilities, Inc. and/or its assets. Pursuant to  
that Order, the individuals identified in subparagraph 89(f) of the Final Order is entitled to  
vote the percentage shown next to that person's name in said subparagraph 89(f), with any  
proposed action receiving greater than 50.0% of the voting interests binding on all parties  
listed in said subparagraph 89(f) of the Final Order.

3. Charlotte County, Florida, has tendered the Rampart Utility System Asset  
Acquisition Agreement (the "Acquisition Agreement") for the purchase of substantially all  
of the water and wastewater utility assets owned or available to Rampart Utilities, Inc. as

described in the Acquisition Agreement (the "Purchase Assets"). The purchase price is to be \$2,433,200, subject to the terms, adjustments and prorations in the Acquisition Agreement, and payable in immediately available funds at closing.

4. A copy of the Acquisition Agreement is attached hereto as Exhibit "A".

5. All of the voting interests from the individuals identified in subparagraph 89(f) of the Final Order have consented to the receiver's execution of the attached Acquisition Agreement and any documents reasonably necessary to effectuate a closing and final reconciliation of said asset purchase and sale transaction. A copy of such consents are attached hereto as composite Exhibit "B".

6. Plaintiffs, and the other individuals identified in subparagraph 89(f) of the Final Order, request the Court enter an Order directing and authorizing the Receiver's execution of the Acquisition Agreement attached hereto as Exhibit "A" and any other documents reasonably necessary to effectuate a closing and final reconciliation of the asset purchase and sale transaction contemplated by Exhibit "A".

7. Plaintiffs further request the Court include in the Order language stating that the Receiver is authorized and directed to act on behalf of, and bind, Rampart Utilities, Inc., inasmuch as Rampart Utilities, Inc. has been in receivership since February, 1993, and does not have a current Board of Directors or slate of officers.

8. Plaintiffs also request that the Court retain jurisdiction over the parties and the subject matter of the Acquisition Agreement attached hereto as Exhibit "A", for the purpose of entering such supplemental orders as may be necessary to fully implement the Acquisition Agreement and any supplementary or incidental matters arising thereunder.

9. Counsel for Defendants, Thomas James, Annie McDonald, Assignee or Margaret McDonald, Rose Woods, for the benefit of Alex Woods, Islay McMillan, Thomas Williamson, George Parks, and Thomas Parks, have represented to the undersigned counsel for Plaintiffs, that their clients are in agreement with the relief sought in this Motion.

WHEREFORE, Plaintiffs respectfully request the Court enter an Order granting this Motion, approving the purchase and sale transaction contemplated by the Acquisition Agreement attached hereto as Exhibit "A" and directing and authorizing the Receiver to do all acts and things required by the Acquisition Agreement, for the full, punctual and complete performance of all of the terms, covenants and agreements contained in the Acquisition Agreement, and authorizing the Receiver to execute and deliver any and all papers and instruments, on behalf of Rampart Utilities, Inc. and not individually, and to do and cause to be done all acts and things necessary or proper for carrying out the transactions contemplated by the Acquisition Agreement as the duly appointed receiver on behalf of Rampart Utilities, Inc.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail, facsimile transmission, or hand delivery to all parties named on the attached service list, this \_\_ day of February, 1999.

---

Larry E. Metz  
Herzfeld & Rubin  
5310 NW 33<sup>rd</sup> Avenue, Suite 102  
Ft. Lauderdale, Florida 33309  
Telephone: (954) 497-1110  
Facsimile: (954) 497-1109  
Florida Bar No.: 372889  
Attorneys for Plaintiffs

[Exhibit B - Form]

CONSENT

1. The undersigned, [NAME], who is a Plaintiff in that certain civil action filed in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida, Case No. 93-17311(04), styled Henry Woods, Sr., et al vs. Hugh Keith, et al, ("Civil Action") and named in subparagraph 89(f)(1) of the Final Order in Court I of Fifth Amended Complaint for Accounting and Dissolution of Maple Leaf, Ltd., entered May 15, 1998, in the Civil Action ("Final Order").

2. Pursuant to the Final Order, the undersigned is entitled to receive \_\_\_% of the net proceeds from any sale of Rampart Utilities, Inc. and/or its assets.

3. Pursuant to the Agreed Order on Procedures to be Followed for Marketing and Sale of Rampart Utilities, Inc., and/or its Assets entered August 28, 1998 in the Civil Action ("Agreed Order on Procedures"), the undersigned is entitled to vote \_\_\_% interest in response to any proposed action to be undertaken in the marketing and sale of Rampart Utilities, Inc.

4. The undersigned does hereby consent to the execution by the Receiver appointed in the Civil Action of the Rampart Utility System Acquisition Agreement Between Charlotte County, Florida, and Rampart Utilities, Inc. attached hereto as Exhibit "A", and said Receiver's execution and delivery of all documents required to effectuate closing and final reconciliation of said asset and purchase transaction.

IN WITNESS WHEREOF, [NAME] has executed this Consent this \_\_\_ day of February, 1999.

[EXECUTIONS AND ACKNOWLEDGMENTS TO COME]

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

BEFORE ME, the undersigned authority, personally appeared **[NAME]**, who is personally known to me or who produced his \_\_\_\_\_ driver's license as identification, and he acknowledged that he executed the foregoing instrument for the purposes therein expressed, and he did take an oath.

(NOTARY SEAL)

\_\_\_\_\_  
NOTARY PUBLIC - STATE OF FLORIDA  
Printed Name: \_\_\_\_\_  
My Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

IN THE CIRCUIT COURT OF THE  
SEVENTEENTH JUDICIAL CIRCUIT IN  
AND FOR BROWARD COUNTY, FLORIDA

CASE NO.: 93-17311 (04)

HENRY WOODS, JR. et al

Plaintiffs,

vs.

HUGH KEITH, Individually, et al

Defendants.

---

CONSENTED ORDER ON MOTION TO APPROVE ACQUISITION AGREEMENT  
AND AUTHORIZE EXECUTION

THIS CAUSE coming to be heard upon the Motion of the Plaintiffs, by and through their counsel, for approval and authorization to execute the Rampart Utility System Asset Acquisition Agreement between Charlotte County, Florida, and Rampart Utilities, Inc. (the "Acquisition Agreement"), and to do all acts and things required by the Acquisition Agreement, for the full, punctual and complete performance of all of the terms, covenants and agreements contained in the Acquisition Agreement, directing and authorizing Theodore Steffens, as the Court appointed Receiver, to execute and deliver any and all things necessary or proper for carrying out of the transactions contemplated by the Acquisition Agreement, and this Court having been fully advised in the premises,

IT IS HEREBY ORDERED:

1. Plaintiff motion to approve the Acquisition Agreement and authorize execution is hereby granted.
2. This Court, notwithstanding any prior injunction issued by this Court, hereby approves the Acquisition Agreement and the transactions contemplated thereunder:
3. Theodore C. Steffens, the Court appointed Receiver in this matter, is hereby directed and authorized to execute this Acquisition Agreement, and to do all acts and things required by the Acquisition Agreement, for the full, punctual and complete performance of all of the terms, covenants and agreements

contained in the Acquisition Agreement, the Receiver is directed and authorized to execute and deliver any and all papers and instruments and to do and cause to be done all acts and things necessary or proper for carrying out the transactions contemplated by the Acquisition Agreement as the duly appointed Receiver on behalf of Rampart Utilities, Inc. so that the Purchased Assets, as described in the Acquisition Agreement, may be conveyed to Charlotte County, Florida, subject to the Permitted Exceptions, as provided in the Acquisition Agreement, but otherwise free and clear of all liens and encumbrances.

4. The Court retains jurisdiction over the parties to this action and the subject matter of the Acquisition Agreement.

DONE and ORDERED in chambers in Ft. Lauderdale, Broward County, Florida, this \_\_\_ day of February, 1999.

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CIRCUIT JUDGE

Copies furnished to attached service list

**CERTIFICATE REAFFIRMING REPRESENTATIONS**

**WHEREAS**, Rampart Utilities, Inc. and Charlotte County entered into that certain Rampart Utility System Asset Acquisition Agreement on the \_\_\_ day of February, 1999 (the "Purchase and Sale Agreement"); and

**WHEREAS**, Section 5.02 of the Purchase and Sale Agreement provides that Rampart deliver a certificate to the County reaffirming the representations and warranties therein.

**NOW, THEREFORE**, to comply with Section 5.02 of the Purchase and Sale Agreement, Rampart does hereby certify to the County the following:

1. That the representations and warranties of Rampart in the Purchase and Sale Agreement are true and correct in all material respects as of the date hereof with the same effect as if such representations and warranties were made or given on the date hereof; and
2. That Rampart has performed in all material respects all of its obligations and has complied with all of the covenants and agreements required by the Purchase and Sale Agreement to be performed or complied with by Rampart prior to or on the date hereof, unless waived in writing by the County.

**IN WITNESS WHEREOF**, Rampart has executed this certificate as of this \_\_\_ day of \_\_\_\_\_, 1999.

**[EXECUTION AND ACKNOWLEDGMENT TO COME]**



## NONFOREIGN AFFIDAVIT

In Re: Estate or interest described in the Rampart Utility System Asset Acquisition Agreement (hereinafter the "Property"); Rampart Utilities, Inc., a Florida corporation ("Rampart") sale to Charlotte County (the "County").

The undersigned affiant (the "Affiant"), being first duly sworn, deposes and says that Affiant makes these representations, based on Affiant's knowledge and belief, to the County, [name of insurer], and [title agent] to induce the closing, disbursement of funds, and issuance of title insurance relative to the captioned transaction, and says that:

1. Affiant is the duly appointed receiver for Rampart Utilities, Inc., a Florida corporation (the "Corporation"); and

2. The Corporation's taxpayer identification number (federal employer identification number) is \_\_\_\_\_; and

3. The Corporation is not a "foreign person" as that phrase is used in Section 1445(b)(2) of the Internal Revenue Code of 1986, as amended; and

4. The principal place of business of the Corporation is [address]; and

5. This Affidavit may be disclosed to the Internal Revenue Service and is given with the knowledge that it is an inducement to and will be relied upon by the County, [name of title insurer] and [name of title agent].

These statements shall be true and correct at settlement, and Affiant shall notify each of the parties mentioned above of any changes in these representations before closing. Affiant intends for each of the parties mentioned above to rely on these representations.

[EXECUTION AND ACKNOWLEDGMENT TO COME]

## NO LIEN AFFIDAVIT

In Re: Estate or interest described in the Rampart Utility System Asset Acquisition Agreement (hereinafter the "Property"); Rampart Utilities, Inc., a Florida corporation ("Rampart") sale to Charlotte County (the "County").

The undersigned affiant (the "Affiant"), being first duly sworn, deposes and says, to the best of my knowledge, that:

1. Rampart (the "Owner") has owned the above Property now being sold by it continuously for over 10 years last past, and its possession thereof has been peaceable and undisturbed and title to said Property has never been disputed or questioned to my knowledge, nor do I know of any facts by reason of which the title to, or possession of, said Property might be disputed or questioned, or by reason of which any claim to any of said Property might be asserted adversely to said Owner.
2. Except for the proceedings in Case No. 93-17311(04) in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida, no proceedings in bankruptcy or receivership have been instituted by, or against said Owner and it has not made an assignment for the benefit of creditors.
3. Except for the proceedings in Case No. 93-17311(04) in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida,, I know of no action or proceeding whatever which is now pending in any State or Federal Court in the United States to which said Owner is a party, nor do I know of any Federal Court Judgment, Federal Tax Lien, or any other Federal Lien of any kind or nature whatever which now constitutes a lien or charge upon the above described real Property.
4. The Owner has received no notice from any public authority, requiring any improvement, alteration or change to be made in or about said Property.
5. There are no tenancies or leases.
6. There are no unrecorded special assessment liens or unrecorded liens arising by virtue or ordinances, unrecorded agreements as to impact or other development fees, unpaid waste fees payable to a county or other service provider or any other unpaid service charges due a municipality or county.
7. There are no unpaid bills or claims for labor, services performed or material furnished or delivered during the last twelve months for alterations, repair work or new construction on the Property.

8. I know of no contract for the making of repairs or improvements on the Property.
9. There are no chattel mortgages, conditional bills of sale, retention of title agreements, security agreements, financing statements, or personal property leases affecting any fixtures, appliances, or equipment which are now installed in or upon said real property or the improvement thereon and all pumping, telemetry, water and wastewater, collection, distribution, treatment or transmission facilities, and other equipment is fully paid for, including all bills for the repair thereof.

The Affiant has been duly authorized to execute, and executes, this affidavit in the capacity of a duly appointed receiver on behalf of the corporation.

**[EXECUTION AND ACKNOWLEDGMENT TO COME]**

## OWNER'S "GAP" AFFIDAVIT

In Re: Estate or interest described in the Rampart Utility System Asset Acquisition Agreement (hereinafter the "Property"); Rampart Utilities, Inc., a Florida corporation ("Rampart") sale to Charlotte County (the "County").

The undersigned affiant (the "Affiant"), being first duly sworn, deposes and says that Affiant makes these representations, based on Affiant's knowledge and belief, to the County, [name of insurer], and [title agent] to induce the closing, disbursement of funds, and issuance of title insurance relative to the captioned transaction, and says, to the best of my knowledge, that:

1. Rampart Utilities, Inc. (the "Owner") is the only owner of the real property described above, subject only to easements, restrictions, reservations of record, taxes for the current year and subsequent years as of the last title insurance commitment effective date for the subject property which was dated [last update before closing].
2. Affiant is the duly appointed receiver for Rampart Utilities, Inc. in the proceedings in Case No. 93-17311(04) in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida,.
3. There are no matters pending against the Owner that could give rise to a lien that would attach to the Property or cause a loss of title or impair the title between the last title insurance commitment effective date and the recording of the interest to be insured, and to my knowledge the Owner has not and will not execute any instrument that would adversely affect the title or interest to be insured.
4. Other than reflected in the last title insurance commitment for the subject property which was dated [last update before closing], the Owner has undisputed possession of the Property and there is no other person or entity in possession, or who has any possessory right in the Property. The Owner does not possess any knowledge of defects in the title to the Property.
5. No "Notice of Commencement" has been recorded which pertains to the Property since the last title insurance commitment effective date, there are no unrecorded labor, mechanics, or materialmen liens against the Property, and all material has been paid for in full.
6. There are no due, or to come due, unpaid bills, liens or assessments for mowing, water, sanitary sewers, paving, solid waste management or other public services, utilities, or improvements made by any governmental instrumentality. Should any bill be found which relates to the period of Owner's possession, Owner will pay such

bill upon demand, subject to the terms of the purchase and sale agreement between the Owner and the County. No notice has been received of any public hearing regarding future or pending zoning changes, or assessments for improvements by any governmental instrumentality.

7. To the knowledge of the Affiant there are no unrecorded deeds, judgments, liens, mortgages, easements or rights of way for users, or adverse interests with respect to the aforesaid Property.
8. The Owner is the owner of, and there are no claims, liens or security interests whatsoever of any kind or description against the furniture, fixtures, equipment and personal property located in the improvements on the aforesaid Property and sold as part of this transaction.
9. There are no existing contracts for sale (other than those being now closed) affecting the Property.
10. There is no civil, criminal, administrative or other action other than [current proceedings] pending which involves the Property in any way. There is no action for bankruptcy pending against the Owner.
11. The Affiant has been duly authorized to execute, and additionally executes, this affidavit in the capacity of a duly appointed receiver on behalf of the corporation.

Affiant warrants that all these statements shall be true and correct at settlement, and Affiant shall notify each of the parties mentioned above of any changes in these representations before closing. Affiant intends for each of the parties mentioned above to rely on these representations.

**[EXECUTION AND ACKNOWLEDGMENT TO COME]**

This Instrument prepared by:  
[Name and address of preparer]

**DEED**

THIS DEED made and executed this \_\_\_ day of February, 1999 by Rampart Utilities, Inc., whose address is [address], hereinafter called the grantor, to Charlotte County (the "County"), whose address is [address], hereinafter called the grantee;

**WITNESSETH:** That the grantor, for and in consideration of the sum of \$10.00 and other valuable considerations, receipt whereof is hereby acknowledged, by these presents do grant, bargain, sell, alien, remise, release, convey and confirm unto the grantee, all that certain land situate in Charlotte County, Florida as shown and more particularly on Exhibit A attached hereto and incorporated herein.

**TOGETHER** with all the tenements, hereditaments and appurtenances thereto belonging or in any way appertaining, including but not limited to, all water and wastewater facilities of every kind and nature lying within said land and all appurtenant easement rights for the operation, installation and maintenance of said facilities.

**TO HAVE AND TO HOLD**, the same in fee simple forever.

[AND the grantor, for itself and its successors, does hereby covenant with said grantee and the grantee's successors and assigns that grantor is lawfully seized of said land in fee simple; that the grantor has good, right and lawful authority to sell and convey said land; that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons claiming by, through or under the grantor, but against none others; and that said land is free of all encumbrances. NOTE: this paragraph will only be required if a specific parcel or interest is identified in the search as owned by Rampart Utilities, Inc., or its predecessors.]

**IN WITNESS WHEREOF** the grantor has caused this Deed in favor of Charlotte County to be executed in its name, [pursuant to court order] the day and year first above written.

**[EXECUTION AND ACKNOWLEDGMENT TO COME]**

This Instrument prepared by:  
[Name and address of preparer]

## BILL OF SALE

**THIS BILL OF SALE** evidencing the sale and conveyance of the Purchased Assets, as described in that certain Rampart Utility System Asset Acquisition Agreement dated the \_\_\_ day of February, 1999, is made and executed this \_\_\_ day of February, 1999, by Rampart Utilities, Inc., a Florida corporation, whose address is [address], hereinafter called the seller, to Charlotte County, whose address is [address], hereinafter called the buyer;

**WITNESSETH:** That the seller, for and in consideration of the sum of \$10.00 and other valuable considerations, receipt whereof is hereby acknowledged, by these presents does grant, bargain, sell, alien, remise, release, convey and confirm unto the buyer, all those certain Purchased Assets as shown and more particularly described on Exhibit A attached hereto and incorporated herein.

**SAID** Purchased Assets also include all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, including but not limited to, all water and wastewater facilities of every kind and nature lying within the lands described on Exhibit B attached hereto and incorporated herein and all appurtenant easement rights for the operation, installation and maintenance of said facilities.

**TO HAVE AND TO HOLD**, the same in fee simple forever.

**AND** the seller, for itself and its successors, hereby covenants with said buyer and the buyer's successors and assigns that it is the lawful owner of said Purchased Assets in fee simple; that it has good, right and lawful authority to sell and convey said Purchased Assets; that it hereby fully warrants the title to said Purchased Assets and will defend the same against the lawful claims of all persons whomsoever; and that said Purchased Assets are free of all encumbrances.

**IN WITNESS WHEREOF** the seller has caused these presents to be executed in its name, [pursuant to court order], the day and year first above written.

**[EXECUTION AND ACKNOWLEDGMENT TO COME]**

## TRANSFER, ASSIGNMENT AND ASSUMPTION AGREEMENT

**THIS AGREEMENT**, is made and entered into this \_\_\_\_ day of February, 1999, by and between Charlotte County (the "County"), and Rampart Utilities, Inc., a Florida corporation ("Rampart").

### WITNESSETH:

**WHEREAS**, Rampart has as of this date conveyed to the County, pursuant to the Rampart Utility System Asset Acquisition Agreement (the "Purchase and Sale Agreement") between Rampart and the County, all of the real and personal property, both tangible and intangible, which comprises the Purchased Assets as described therein.

**NOW, THEREFORE**, in consideration of the mutual promises, covenants, representations and agreements contained herein, together with \$10 and other good and valuable consideration exchanged between the parties, the parties do undertake, promise and agree for themselves, their permitted successors and assigns as follows:

**SECTION 1. PURPOSES AND DEFINITIONS.** This Agreement is intended to (A) supplementally transfer and assign Rampart's rights, remedies, powers, title and interest in the Purchased Assets, arising by virtue of the certificate of authorization granted to Rampart by the Florida Public Service Commission, any permits or other authorizations relating to the Utility System, or arising by virtue of the County assuming the operation and control over the Utility System, (B) establish certain post closing relationships of the parties, (C) provide for the assumption by the County for the responsibility of operation of the Utility System, and (D) identify specific contractual obligations of Rampart that the County agrees to assume. This Agreement is supplemental to the Purchase and Sale Agreement. All capitalized words and terms not otherwise defined herein shall have the meanings set forth in the Purchase and Sale Agreement.

### **SECTION 2. REPRESENTATIONS.**

(A) The representations and warranties of Rampart and the County in the Purchase and Sale Agreement are true and correct in all material respects as of the date hereof with the same effect as if such representations and warranties were made or given on the date hereof.

(B) To the best of each party's knowledge and belief, Rampart and the County have performed in all material respects all of their obligations and have complied with all of the covenants and agreements required by the Purchase and Sale Agreement to be performed or complied with by Rampart and the County prior to or on the date hereof, unless waived in writing.



**SECTION 3. TRANSFER AND ASSIGNMENT.** Rampart shall, and does hereby, transfer, assign, convey, and grant, bargain and sell unto the County all of Rampart's rights, remedies, powers, title or interest in the Purchased Assets, including any rights, remedies, powers, title or interest arising by virtue of any franchise or certificate of authorization granted to Rampart by the County or the State of Florida, or arising by virtue of the County assuming the operation and control of the Utility System. The foregoing transfer and assignment is supplemental to all other instruments and actions necessary to close pursuant to the Purchase and Sale Agreement.

**SECTION 4. POST CLOSING RELATIONSHIP.**

(A) From time to time after closing, each party hereto shall, upon request of the other, execute, acknowledge and deliver, or shall cause to be executed, acknowledged and delivered, all such further acts, deeds, assignments, transfers or other documentation for (1) confirming or correcting title in the name of the County or perfecting undisputed possession by the County of any or all of the Purchased Assets, including the establishment of record of utility easements for all water and wastewater utility facilities which are a part of the Utility System and in existence at the time of closing, or (2) otherwise fulfilling the obligations of the parties under the Purchase and Sale Agreement.

(B) After closing, Rampart covenants not to own, manage, operate, maintain, provide services to or engage in the water or wastewater utility business within the areas served by the Utility System, without the express written consent of the County, for a period of 4 years from the date of closing. Such consent may be arbitrarily withheld by the County. Rampart acknowledges that the provisions of this covenant are reasonable in all respects, including time and scope.

**SECTION 5. ASSUMPTION.** The County hereby assumes the operation of the Utility System and only those obligations, duties and liabilities (1) accruing thereto after the County takes possession of the Purchased Assets, (2) expressly assumed by the County in the Purchase and Sale Agreement, or (3) expressly assumed as follows:

- (a) the obligation to return customer deposits in due course;
- (b) the rights and obligations of Rampart under the following agreements:
  - (i) [to come -- insert list of agreements].

(B) Upon closing pursuant to the Purchase and Sale agreement and the transfer of possession of the Purchased Assets to the County thereunder, Rampart's obligation or responsibility to act or serve as a provider of water or wastewater services as the owner of the Utility system shall cease and terminate. Accordingly, in such an event, the County acknowledges and accepts the responsibility and obligation to provide water and

wastewater services, as a governmentally owned and controlled service provider within the areas previously served by Rampart.

**SECTION 6. BINDING EFFECT.** This Agreement shall inure to the benefit of and be binding upon Rampart and the County and their permitted successors and assigns.

**IN WITNESS WHEREOF,** Rampart and the County have caused this Agreement to be duly executed and entered into on the date first above written.

**[EXECUTIONS AND ACKNOWLEDGMENTS TO COME]**

**EXHIBIT "B"**  
**CUSTOMER DEPOSITS**

Credit shall be given to the County at closing for the liabilities assumed for customer deposits or unused application fees or charges, including any interest due thereon through the date of closing. Rampart shall furnish to the County, 15 days prior to closing and at closing, (1) a listing of current customers, (2) a listing of customer deposits by customer account (including name and address information) and an aggregate total thereof, and (3) a listing of all unexpended application fees or charges (including the name and address of the applicant and identification of the agreement under which the fee was collected or charged, if any) and an aggregate total thereof.

**EXHIBIT "C"**

Rampart Utilities owes outstanding regulatory assessment fees which will be paid in full on or about the date of closing. In addition, Rampart Utilities owes penalties in the amount of \$4,616.13 which will also be paid on or about the date of closing.

EXHIBIT "D"

# COUNTY OF CHARLOTTE

## CHARLOTTE COUNTY UTILITIES

(941) 625-4164	(800) 524-3494
Administration Fax (941) 743-4530	(941) 764-4557 Customer Service Fax

<b>Mailing Address</b>	<b>Business Office</b>
18500 Murdock Circle	20101 Peachland Boulevard, Suite 301
Port Charlotte, Florida 33948	Port Charlotte, Florida 33954



March 17, 1999

Mr. Chris Browder, Esq.  
 Gray, Harris & Robinson  
 201 East Pine Street  
 Suite 1200  
 Orlando, FL 32802-3068

Dear Mr. Browder:

Pursuant to our telephone conversation, please be advised that on March 9, 1999, the Charlotte County Board of County Commissioners conducted a public hearing pursuant to Chapter 125.3401 of the Florida Statutes to consider information relating to the acquisition of Rampart Utilities, Inc. Evidence and testimony considered by the Commission at that public hearing included income and expense statements, balance sheets for the year ending December 31, 1998, calculation of utility rate base and contributions in aid of construction for the year ending December 31, 1997, as well as engineering reports and appraisals relating to the utility system.

Based upon the evidence and testimony received, the Board of County Commissioners determined that the acquisition of Rampart Utilities, Inc., by Charlotte County is in the public interest and that the conditions of Chapter 125.3401 of the Florida Statutes have been met.

Please contact this office if you need further consideration in this matter.

Sincerely,

Richard E. Howell  
 Director

REH/li

cc Martha Young Burton, Assistant County Attorney

FLORIDA PUBLIC SERVICE COMMISSION

Certificate Number  
572 - W

Upon consideration of the record it is hereby ORDERED  
that authority be and is hereby granted to:

RAMPART UTILITIES, INC.

Whose principal address is:

2100 Kings Highway  
Port Charlotte, FL 39980 (Charlotte County)

to provide water service in accordance with the provision  
of Chapter 367, Florida Statutes, the Rules, Regulations  
and Orders of this Commission in the territory described  
by the Orders of this Commission.

This Certificate shall remain in force and effect until  
suspended, cancelled or revoked by Orders of this  
Commission.

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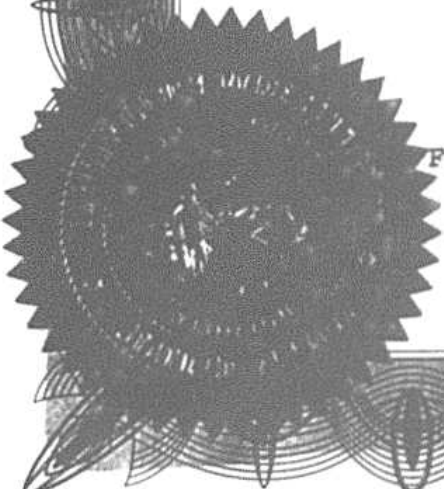
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BY ORDER OF THE  
FLORIDA PUBLIC SERVICE COMMISSION



Director  
Division of Records and Reporting



FLORIDA PUBLIC SERVICE COMMISSION

Certificate Number  
497 - S

Upon consideration of the record it is hereby ORDERED  
that authority be and is hereby granted to:

RAMPART UTILITIES, INC.

Whose principal address is:

2100 Kings Highway  
Port Charlotte, FL 39980 (Charlotte County)

to provide wastewater service in accordance with the  
provision of Chapter 367, Florida Statutes, the Rules,  
Regulations and Orders of this Commission in the  
territory described by the Orders of this Commission.

This Certificate shall remain in force and effect until  
suspended, cancelled or revoked by Orders of this  
Commission.

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BY ORDER OF THE  
FLORIDA PUBLIC SERVICE COMMISSION



Director  
Division of Records and Reporting