

FILE

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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DOCKETING DIVISION  
Public Utilities Commission of Ohio

In the Matter of the Application :  
Of Aqua Ohio, Inc. To Amend Aqua Ohio, Inc.'s :  
Certificate of Public Convenience and Necessity :  
to Expand The Territory to Which Aqua Ohio : Case No. 07-\_\_\_\_-WW-AAC  
Provides Water Service :  
:  
In the Matter to Approve Special Contracts :  
To Serve the Woods at Auburn Lakes : Case No. 07-\_\_\_\_-WW-AEC  
Condominium Association :  
:  
In the Matter to Approve Special Contracts :  
To Serve the Auburn Lakes Condominium : Case No. 07-677-WW-AEC  
Association :  
:  
In the Matter to Approve Special Contracts :  
To Serve the Auburn Crossing : Case No. 07-\_\_\_\_-WW-AEC  
Condominium Unit Owners' Association :

APPLICATION OF AQUA OHIO, INC., FOR APPROVAL TO AMEND THE  
CERTIFICATE OF PUBLIC NECESSITY TO EXPAND THE TERRITORY TO  
WHICH AQUA OHIO PROVIDES WATER SERVICE

APPLICATION OF AQUA OHIO, INC. FOR APPROVAL OF CONTRACTS WITH  
CONTRACT RATES TO SERVE THE WOODS AT AUBURN LAKES CONDOMINIUM  
ASSOCIATION, THE AUBURN LAKES CONDOMINIUM ASSOCIATION, AND THE  
AUBURN CROSSING UNIT OWNERS' ASSOCIATION

Now comes Aqua Ohio, Inc., (hereinafter "Aqua Ohio") and applies to the Public Utilities Commission of Ohio (hereinafter "Commission"), pursuant to Revised Code §§4905.04, 4909.18 and 4933.25 and Ohio Administrative Code (OAC) §§4901:1-15-04, 4901:1-15-05 and 4901:1-15-07, for approval to amend its Certificate of Public Convenience and Necessity No. 30 to expand the territory served by Aqua Ohio. Aqua Ohio is also applying to the Commission pursuant to Revised Code §4905.31 for approval of contracts with the following condominium

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associations: 1) Woods At Auburn Lakes Condominium Association; 2) the Auburn Lakes Condominium Association; and 3) the Auburn Crossing Unit Owners' Association, all of which are located in the territory for which approval is sought.

Aqua Ohio is a corporation duly organized under the laws of Ohio. Aqua Ohio is a water works company and public utility as defined, respectively, in Revised Code §4905.03(A)(8) and Revised Code §4905.02 and as such is subject to the jurisdiction of this Commission. Aqua Ohio is authorized to provide water to customers in Ohio pursuant to the following Certificates of Public Convenience and Necessity.

1. Certificate No. 30 – Lake Erie Division
2. Certificate No. 32 – Stark Regional Division
3. Certificate No. 35 – Struthers Division
4. Grandfathered (No Certificate no. Available) – Masury Division.

Aqua Ohio provides water service through the above identified divisions pursuant to the following approved tariffs:

1. Aqua Ohio, Inc., Lake Erie Division – P.U.C.O. Tariff No. 1
2. Aqua Ohio, Inc., Stark Regional Division – P.U.C.O. Tariff No. 1
3. Aqua Ohio, Inc., Struthers Division – Master Tariff No. 2
4. Aqua Ohio, Inc., Masury Division – Master Tariff P.U.C.O. No. 1

Currently Auburn Lakes Limited Partnership (herein “Auburn Lakes LP”), a non-regulated private entity, provides potable water service to three separate residential condominium developments in Geauga County, Ohio through a separate contract with each of the following condominium owners associations: 1) The Woods at Auburn Lakes Condominium Association (herein “The Woods”); 2) The Auburn Lakes Condominium Association (herein “Auburn Lake

Condos"); and 3) The Auburn Crossing Condominium Unit Owners' Association (herein "Auburn Crossing"), all three condominium associations are individually referred to herein as a "Condo Association" and collectively referred to herein as "Condo Associations". Aqua Ohio has entered into a contract with Auburn Lakes LP to purchase the assets of the Auburn Lakes LP water system. Attached hereto as Exhibit A is a copy of the purchase agreement between Aqua Ohio and Auburn Lakes LP. Attached hereto in form of a proposed tariff page and identified as Exhibit B is a map of the territory served by Auburn Lakes LP, which is the location of each Condo Association, and which is the territory that Aqua seeks to add to the Certificate of Public Convenience and Necessity of its Lake Erie Division.

Aqua Ohio now files this application to amend its Certificate of Public Convenience No. 30 for its Lake Erie Division to authorize it to serve the territory set forth in Exhibit B. In addition, Aqua Ohio seeks approval of three water service contracts between itself and each Condo Association to provide water service to the Condo Associations. Attached to this Application and incorporated by reference are Exhibits D1 through D3, which are the contracts between Aqua Ohio and the Condo Associations for the provision of water service to the Condo Associations. As demonstrated by the contracts in Exhibits D1 through D3, each Condo Association will be provided water service pursuant to the terms and conditions set forth in Aqua Ohio's Lake Erie Division tariff. Each Condo Association has agreed to a rate for water service, which is the same for each Condo Association, during the term of the water service agreements. Each Condo Association understands that Aqua Ohio may seek a rate case at any time and that the rates for water service may be increased or decreased by the Commission pursuant to a duly filed rate case, and thus voiding the contracts.

Since Aqua Ohio's Lake Erie Division already has a Certificate of Public Convenience and Necessity and a Tariff approved by the Commission and since the new territory will be served through contract rates until a future rate case, Aqua Ohio requests a waiver of the Exhibits required by OAC §§4901:1-15-05(D)(1) through (D)(17), and (D)(20) to minimize the cost and expense to Aqua Ohio's current customers to prepare and process this application. Aqua Ohio will provide any documentation that the Commission or its staff requires to evaluate this application upon request. A proposed legal notice required by OAC §4901:1-15-04 and OAC §4901:1-15-05(D)(21) is attached hereto and incorporated as Exhibit E to this application. This notice will be published in a newspaper of general circulation in accordance with OAC §4901:1-15-04 and OAC §4901:1-15-05(D)(21) upon issuance of the Commission that application complies with the applicable requirements.

Pursuant to the contracts for water service, any services provided to the new territory set forth in Exhibit B shall be governed by the provisions of Aqua Ohio, Inc., Lake Erie Division, Tariff P.U.C.O. No. 1. Unless otherwise ordered by this Commission, the rates to be charged Condo Associations are the rates set forth in Exhibits D1 through D3, agreements with each Condo Association. If the Commission approves this application to amend the service territory of the Lake Erie Division, the only changes that will need to be made to the Aqua Ohio, Lake Erie Division, Tariff P.U.C.O. No. 1, are as follows:

1. Revised Subject Index Pages – A proposed draft is attached hereto and incorporated by reference as Exhibit C1
2. New Rate Page - A proposed draft is attached hereto and incorporated by reference as Exhibit C2

3. A New Map and Legal Description Page – A proposed draft is attached hereto and incorporated by reference as Exhibit B. .

As required by OAC §4901:1-15-05(D)(18) and (D)(19), there is a present and continuing need by the public in territory set forth in Exhibit B for reliable and efficient water service. The current private agency is no longer capable of economically and efficiently providing the facilities and services. Accordingly, for all of the reasons set forth above, Aqua Ohio respectfully requests that this Commission approve this application to amend the territory served by Aqua Ohio's Lake Erie Division. Attached hereto as Exhibit F is an affidavit of Walter J. Pishkur attesting to and adopting all filings submitted with the application pursuant to the requirements of OAC §4901:1-15-(D)(22).

Respectfully submitted,



John W. Bentine (0016388)  
Trial Attorney  
Todd M. Rodgers (0061554)  
CHESTER, WILLCOX & SAXBE, LLP  
65 E. State Street, Suite 1000  
Columbus, Ohio 43215  
(614) 221-4000  
Attorneys for Aqua Ohio, Inc.

**CERTIFICATE OF SERVICE**

In accordance with OAC §4901:1-15-05 and OAC §4901:1-15-07, Aqua Ohio, Inc. hereby certifies that a copy of this Application to Amend the Certificate for its Lake Erie Division and Approval Service Contracts with the Condo Associations was served upon the Ohio Environmental Protection Agency as the address listed below, via U.S. regular mail, postage prepaid, this 4<sup>th</sup> day of June, 2007

  
\_\_\_\_\_  
Todd M. Rodgers

Joseph Koncelik  
Director of Ohio Environmental Protection Agency  
P.O. Box 1049  
Columbus, Ohio 43216-1049

5-14-2007

**ASSETS PURCHASE AGREEMENT**

**FOR THE ACQUISITION OF THE WATER SYSTEM ASSETS**

**OF**

**AUBURN LAKES LIMITED PARTNERSHIP**

**BY**

**AQUA OHIO, INC.**

**May 14, 2007**

**EXHIBIT A**

**THIS ASSETS PURCHASE AGREEMENT**, dated as of May 14, 2007, by and between **Auburn Lakes Limited Partnership**, an Ohio limited partnership having an office address of 25700 Science Park Drive, Suite 270, Beachwood, Ohio 44122 (hereinafter referred to as "Seller") and **Aqua Ohio, Inc.**, an Ohio corporation having an office address of 6650 South Avenue, Boardman, Ohio 44512 (hereinafter referred to as "Aqua").

## **RECITALS**

A. Seller is an entity that furnishes water service to three condominium associations located within the Auburn Township community, situated in Geauga County, Ohio, each of which is identified on Schedule 1.1 and on Schedule 5.9 hereto (the "Customers"), in the area shown and described on Schedule R-A attached hereto and by this reference made a part hereof (the "Service Area"). Seller desires to sell its water system operations in the Service Area (the "Water System Business") to Aqua.

B. Aqua is a public water utility that furnishes water service to the public in certain portions of the State of Ohio. Aqua has an established record of acquiring smaller companies, making improvements, and enhancing the service capabilities of such smaller companies.

C. Accordingly, Seller desires to sell, and Aqua desires to purchase, certain assets, properties and rights of Seller owned and used in connection with its Assets (as defined below), all upon the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the aforementioned recitals and the covenants, representations, warranties and agreements herein contained, and intending to be legally bound hereby, the parties hereto agree as follows:

### **1. SALE AND PURCHASE OF THE ASSETS**

Subject to the terms and conditions hereinafter set forth, at the Closing (as defined below) Aqua shall purchase from Seller, and Seller shall sell, assign, transfer, grant, convey and deliver the Assets (as defined below) to Aqua in consideration of the Purchase Price (as defined below).

As used in this Agreement, "Assets" means all of the right, title and interest that Seller possesses and has the right to transfer in and to all of its assets, properties and rights used or useable in the Water System Business, whether tangible or intangible, real, personal or mixed, which are held or used by, or obligated to be transferred to, Seller with respect to the supplying and distribution of water in the Service Area, but the term "Assets" shall not include any "Excluded Assets" as defined below. The "Assets" shall, without limitation to the definition stated in the preceding sentence, include the specific assets, properties and rights set forth on Schedule 1.1 attached hereto and by this reference made a part hereof.

**1.1 Title.** At the Closing Seller shall convey to Aqua good, marketable and insurable title to those Assets that constitute interests in real property (the "Property") by Limited Warranty Deed, which title shall be free and clear of all encumbrances except for the Permitted Exceptions (as hereinafter defined).

As used herein, the term "Permitted Exceptions" shall mean all exceptions to title to the Property not objected to by Aqua after Aqua has reviewed (a) a commitment (the "Commitment") to issue an American Land Title Association ("ALTA") Owner's Title Insurance



Policy (the "Owner's Policy") by Chicago Title Insurance Company (the "Title Company") through Chicago Title of Chardon, Ohio (the "Title Agency") ordered by Aqua at Seller's cost showing in Seller good and marketable fee simple title to the Property, free and clear of all liens and encumbrances, other than (i) real estate taxes which are a lien on the Property but which are not yet due and payable, (ii) various blanket utility easements granted by Seller on the Property, none of which materially and adversely affect Seller's ability to own the Assets or operate the Water System Business, and (iii) mortgages or other liens that will be released at Closing by Seller without payment or other action required on the part of Aqua, and (b) if required by the Title Company in order to issue the Owner's Policy, an ALTA survey of the Property (the "Survey") prepared by a surveyor of Aqua's choice at Seller's cost, which survey depicts the location of all "plottable exceptions" appearing on the Commitment. The items referred to in clauses (a)(i) and (a)(ii) of the prior sentence and the additional matters described on Schedule 1.1 shall be "Permitted Exceptions" under this Agreement. Aqua hereby covenants to and agrees with Seller that Aqua (i) shall order the Commitment within seven (7) business days following execution of this Agreement, (ii) shall order the survey within seven (7) business days following its receipt of the Commitment from the Title Agency, (iii) shall provide to Seller in writing any objections to title within ten (10) business days following its receipt of the Survey, and (iv) shall not object to any matters of title that do not materially and adversely affect Aqua's ability to operate the Water System Business following Closing.

If any matters other than (i) mortgages or other liens that will be released at Closing, and (ii) Permitted Encumbrances appear in the Commitment, Aqua shall have seven (7) business days following receipt of the Commitment within which to object in writing to the substantive matters reflected therein. Seller shall, within five (5) business days following the receipt of such objection by Aqua, inform Aqua whether or not Seller is able to remove or cure the matter or matters objected to by Aqua. If Seller can so remove or cure such matters, the parties shall proceed toward Closing, with the Closing Date being extended for such a reasonable time as may be necessary to remove or cure all of those matters to which Aqua has objected, with such extension not to exceed thirty (30) days. Aqua shall, within seven (7) business days of receiving written notice that Seller is unable to so remove or cure such matters either (1) waive its objection to those matters not removed or cured and proceed to the Closing; or (2) terminate this Agreement, in which event any information and documents supplied by Seller to Aqua shall promptly be returned to Seller and Aqua shall be relieved and discharged of any further liability or obligation under this Agreement, except such obligations as expressly survive termination. In the absence of any response by Aqua to Seller's written notice that Seller is unable to timely remove or cure such matters, Aqua shall be deemed to have waived its objections to such title matters. As set forth above, all title matters relating to the Property that are not duly and timely objected to by Aqua shall be deemed "Permitted Exceptions" under this Agreement.

**1.2 Customer Billing.** Unless another arrangement is established prior to Closing, Seller shall issue final bills for all customer accounts on or before the date of Closing. Seller shall be solely responsible for the collection of any cash and receivables due on these and any final bills, and under no circumstance shall Aqua be responsible for the collection or payment of any and all corresponding amounts due Seller.

**1.3 Excluded Assets.** Notwithstanding the foregoing, the Assets shall not include any of the following (the "Excluded Assets"):

- a. any and all customer service lines (including customer meter pits) that run from the curb stop area (or edge of road) to each of the individual customer residences;

- b. all piping and fixtures internal to each of the individual customers' residences;
- c. Seller's cash, bank accounts and accounts receivable;
- d. Seller's rights under any policies of insurance;
- e. Seller's tax identification numbers and rights to receive refunds from federal, state and local taxing authorities;
- f. Seller's charter as an Ohio limited partnership and related rights with respect to its partners;
- g. Seller's rights under contracts, agreements and other instruments not set forth on Schedule 1.5 below and therefore not inc among the Assumed Contracts as defined below;
- h. The common areas and facilities owned by the Customers within the Service Area now known as the common elements; and
- i. Seller's rights under this Agreement and under any other agreement or side letter executed after the date hereof by Seller and Aqua.

**1.4 Consideration.** The initial purchase price for the Assets to be paid by Aqua to Seller (the "Purchase Price") shall be Four Hundred Thousand Dollars (\$400,000.00) to be paid in full, via wire transfer of immediately available funds, at the time of Closing.

**1.5 No Assumption of Liabilities Except Assumed Contracts; Assignment and Assumption Agreement.** Aqua shall not assume any liabilities or obligations of Seller under any contract, agreement, commitment, lease, certificate, permit, license, approval or other instrument, whether oral or written, express or implied, or fixed or contingent, except the contracts, agreements, commitments, leases, certificates, permits, licenses, approvals and other instruments of Seller listed on Schedule 1.5 (the "Assumed Contracts"). At the Closing, Aqua and Seller shall execute and deliver an Assignment and Assumption Agreement in the form of Exhibit A (the "Assignment") pursuant to which Seller shall assign, and Aqua shall assume all of Seller's rights and obligations under, the Assumed Contracts as of the Closing Date.

## **2. CLOSING**

Subject to the provisions of this Agreement,

- a. The Closing of the transactions contemplated in this Agreement (the "Closing") shall take place at 10:00 a.m. local time at the offices of the Title Agency, 147 Main Street, Chardon Ohio 44024, or at such other time and place as the parties may mutually agree to in writing (the "Closing Date").
- b. The Closing shall be held after (i) Aqua has received any necessary orders issued by the Public Utilities Commission of Ohio ("Commission") that comply with Section 5.4, (ii) Aqua has received a license to operate the Water System

Business issued by the Ohio Environmental Protection Agency ("OEPA") that is reasonably satisfactory to Aqua, and (iii) all other conditions to Closing specified in this Agreement (except those within the sole control of one of the parties) have been waived or satisfied.

- c. At the Closing, all documents required hereunder to be delivered by the parties shall be delivered in escrow to the Title Agency, which shall act as escrow agent in respect of the Closing. At Closing, Seller shall execute and deliver the Limited Warranty Deed and, if required by the Title Agency, shall execute and deliver a seller's affidavit in accordance with community custom in such form as the Title Agency may reasonably require in order to remove all standard exceptions unrelated to survey matters to the Owner's Policy, and provide such endorsements thereto as Aqua may reasonably require, at Aqua's own cost, all to the extent removable by affidavit. At the Closing, following satisfaction of all requirements and conditions specified herein, Aqua shall release such of the documents received from Seller, as Aqua reasonably desires to have recorded, to the Title Agency, and Aqua shall concurrently instruct the Title Agency to record such documents necessary to consummate this transaction and simultaneously transfer the Purchase Price to such bank account as Seller has designated in writing in advance, and deliver Aqua's Section 4.1 closing certificate to Seller. The Title Agency shall not be authorized to record the Limited Warranty Deed or any other transfer documents until it has in its possession the Purchase Price and is prepared to deliver the same to Seller in immediately available funds. The Title Agency shall not be authorized to deliver the Purchase Price to Seller until it has recorded such documents necessary to consummate this transaction and is irrevocably committed to deliver the Owner's Policy to Aqua.

**2.1 Items to be delivered at the Closing.** At the Closing (or such other time as indicated) and subject to the terms and conditions herein contained:

- a. Seller shall deliver to Aqua, all in a form reasonably satisfactory to Aqua and its counsel, the Assets by delivery of the following:
- (i) instruments and documents of conveyance and transfer, all in form reasonably satisfactory to Aqua and its counsel, as shall be necessary and effective to transfer and assign to, and vest in, Aqua good and marketable (and fee simple, as to the Property), title to the Assets and all easements and rights (including well-head protection) to operate the Assets as such are now being operated, i.e., a Limited Warranty Deed with respect to the Property, the Assignment with respect to the Assumed Contracts, and a Bill of Sale with respect to the remaining Assets in substantially the form of Exhibit B attached hereto (the "Bill of Sale") and an easement for the 5.7965 acre portion of Parcel No. 01-002170 in substantially the form of Exhibit "C" attached hereto (the "Easement"), and shall execute real property conveyance fee statements properly allocating the portion of the Purchase Price to the Property and to the Easement as set forth in Schedule 1.7;

- (ii) keys to any and all buildings and improvements, if any, included in the Assets;
  - (iii) copies of, or the originals as appropriate, of all Assumed Contracts and other instruments that are part of or related to the Assets;
  - (iv) all books, records, journals and other documents related to the construction, maintenance, repair, replacement and operation of the Assets; and
  - (v) the closing certificate provided for in Section 5; and simultaneously with such delivery, all such steps shall be taken by Seller as may be reasonably required to put Aqua in actual possession and operating control of the Assets.
- b. Aqua shall deliver to the Title Agency the Purchase Price and the closing certificate of Aqua provided for in Section 4.1.

**2.2 Utilities, Taxes and Closing Costs.** At the Closing, all utilities and real and personal property taxes shall be prorated between the parties as of the Closing Date, using Seller's last available utility bills, real property tax duplicate and most recent personal property tax return for determination of proration credit amounts.

At or prior to the Closing, Seller shall pay the following costs:

- a. Transfer taxes (real and personal, if any) with respect to the Assets;
- b. Title search fees and commitment fees of the Title Agency and one-half (1/2) of the premium for issuance of the Owner's Policy up to the amount of the Real Property Purchase Price;
- c. Seller's legal and consultant's fees;
- d. One half of the escrow and closing costs of the Title Agency; and
- e. Satisfaction of any liens, mortgages and claims, and costs of recording associated instruments.
- f. The cost of the Survey;

At or prior to the Closing, Aqua shall pay the following costs:

- a. Any sales taxes relating to sale of personal property;
- b. Recording fees for Warranty Deed;
- c. Aqua's legal and consultant's fees;
- d. One-half (1/2) of the premium for the Owner's Policy up to the amount of the Real Property Purchase Price, and all of the premium therefor over and above

the Real Property Purchase Price, and the full cost of any endorsements to the Owner's Policy requested by Aqua;

- e. All costs associated with the approval of the Commission as to the transactions contemplated hereby and all costs associated with obtaining a license to operate the Water System Business from the OEPA; and
- f. One-half of the escrow and closing costs of the Title Agency.

**2.3 Transfer of Utilities.** Seller and Aqua shall reasonably cooperate to transfer utility services, including telephone, electric and gas service, as of the Closing Date. In the event such services cannot be transferred into the name of Aqua, as of the Closing Date, the bills shall be pro-rated as of the Closing Date.

**2.4 Remedy.** Seller acknowledges that the Assets are unique and not otherwise available and agrees that, in addition to any other remedy available to Aqua, Aqua may invoke any equitable remedy to enforce performance hereunder, including the remedy of specific performance.

**2.5 Employees.** As set forth in Section 6.1(u), Seller has no employees. Aqua shall have no obligation or responsibility for, and Seller shall be solely responsible for and assume all liability for, any and all obligations relating to former employees of Seller, including employment taxes and benefits including any retirement and/or severance obligations.

**2.6 Further Assurances.** Seller shall execute, acknowledge and deliver to Aqua from time to time such other instruments of sale, conveyance, assignment and transfer and will take such other actions and execute and deliver such other documents, certifications and further assurances as Aqua may reasonably require to vest in Aqua all rights, title and interest in and to the Assets.

### **3. CONDUCT OF SELLER PENDING CLOSING**

Seller agrees that, with respect to the Assets, pending the Closing and except as otherwise agreed to in writing by Aqua:

- a. The Water System Business of Seller shall be conducted solely in the ordinary course of business consistent with past practice, and prior to the Closing Seller shall make only such capital improvements thereto as may be reasonably necessary to continue operation thereof in accordance with current operating standards, and shall give Aqua written notice of any capital improvements needed to continue operation thereof in accordance with current operating standards.
- b. Seller shall continue to provide maintenance service on its physical assets in substantially the same manner as has been its past practice.
- c. Seller shall use its commercially reasonable efforts to maintain its goodwill and good relations with its suppliers, the Customers and any others having business relations with it.

- d. Seller shall maintain in full force and effect the insurance policies and binders currently maintained, copies of which are being delivered to Aqua simultaneously with the execution of this Agreement.
- e. Seller shall comply in all material respects with all laws, ordinances, rules, regulations and governmental orders applicable to it and to the conduct of its Water System Business, except for the "PUCO Requirements." Notwithstanding any other provision in this Agreement, Seller hereby discloses to Aqua, and Aqua hereby acknowledges, that Seller has not, and shall not prior to the Closing, be licensed as a public utility and accordingly has not, and shall not prior to the Closing, comply with any Commission requirements or Ohio laws applicable to water companies and the Water System Business. Such obligations are hereinafter referred to as the "PUCO Requirements"). Aqua hereby expressly assumes all risks associated with acquiring the Assets and the Water System Business notwithstanding Seller's failure to comply with or observe the PUCO Requirements.
- f. Seller shall promptly advise Aqua in writing of any claim, whether presented in writing or asserted against Seller orally, or the commencement or threat of any action, suit, proceeding, arbitration or investigation against or involving the Assets, or the sale and transfer thereof to Aqua or, to its knowledge, of the occurrence of any condition or development (exclusive of general economic factors affecting businesses in general) of a nature that is or may be materially adverse to the business, operations, properties, assets or condition of the Assets.
- g. Seller shall use its commercially reasonable efforts not to take any action that would result in a material breach of any representations and warranties of Seller hereunder.
- h. Seller shall provide Aqua with such existing financial and other reports of its Water System Business and the Assets as Aqua may reasonably request.
- i. Seller shall give to Aqua's officers, employees, accountants, contractors, agents, counsel and other representatives free and full access to and the right to inspect during normal business hours, all of the Assets and the premises, properties, assets, books, journals, records, contracts and other documents relating to the Assets, Seller's Water System Business and operations, and the capability and performance history of the Assets, and shall permit such persons to consult with the officers, employees, accountants, contractors, representatives, customers and agents of Seller for the purpose of making such investigation of the business and operations of Seller and the Assets as Aqua shall reasonably desire to make. Aqua may give to Seller access to information Aqua reasonably deems to be "Confidential Information". The receiving party shall treat and hold as such any "Confidential Information" it receives from the other party or from other persons associated or affiliated with such other party in the course of the investigations contemplated by this Section 3(i), shall not disclose or publish any of the Confidential Information to any third party or

governmental entity (except as required by law, in which case notice shall be given to the other party prior to disclosure), shall not use any of the Confidential Information except in connection with the transactions contemplated by this Agreement, shall disclose the Confidential Information only to its employees, consultants and other professional advisers involved in evaluating and consummating the transactions contemplated hereby on each party's behalf (each, a "Representative") and, if this Agreement is terminated for any reason whatsoever, shall return to the delivering party all tangible embodiments (and all copies) of the Confidential Information that are in the possession of the receiving party or its Representatives (or shall certify to such party in writing that all such embodiments and copies have been destroyed). As used in this section, "Confidential Information" means any information concerning the business, condition (financial or otherwise) and affairs of the delivering party, including customer information, cost and operating information, and information related to the Assets, the Property, the Assumed Contracts and the Water System Business not already generally available to the public. The receiving party shall be liable to the delivering party for any breach of the foregoing confidentiality obligations in respect of disclosures thereof made by the receiving party or any Representative receiving Confidential Information. The receiving party shall advise each Representative to whom Confidential Information is disclosed that the same constitutes Confidential Information hereunder and is required to be maintained strictly confidential.

- j. Seller will cooperate with Aqua in sending (at Aqua's expense) any customer notices that in the reasonable judgment of both parties are necessary or desirable in connection with the transactions contemplated herein.
- k. Seller shall (and shall use its reasonable efforts to cause its counsel, accountants, agents, officers, general partners and other representatives to) support the acquisition of the Assets by Aqua (and the related application(s) filed by Aqua at the Commission and the OEPA), shall take such actions as are reasonably requested by Aqua in connection with any application(s) filed at the Commission or with the OEPA, and prior to the termination of this Agreement Seller shall not solicit offers by other parties seeking to acquire the Assets or any part thereof (other than the routine retirements or transfers of Assets in the ordinary course of business).
- l. Seller shall, within ten (10) business days following its execution of this Agreement, submit to Aqua a copy of all Assumed Contracts.
- m. Seller shall take all actions that are reasonably requested in writing by Aqua to facilitate the transfer to Aqua at the Closing of any permits, warranties, approvals and licenses specified by Aqua in such writing to operate the Assets after the Closing.

#### **4. CONDITIONS PRECEDENT TO SELLER'S OBLIGATIONS**

All obligations of Seller under this Agreement are subject to the fulfillment or satisfaction, or waiver by Seller, prior to or at the Closing, of each of the following conditions precedent

**4.1 Closing Certificate; Performance.** Aqua, by its employees, officers and agents, shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing; and Seller shall have been furnished with a certificate or certificates of Aqua dated the Closing Date, signed by Aqua, in form and substance reasonably satisfactory to Seller, certifying and confirming, in such detail as Seller may reasonably request, the fulfillment of the relevant conditions and that all representations and warranties of Aqua in this Agreement are true and correct in all material respects as of the Closing Date.

**4.2 Commission Order(s) and OEPA License.** Aqua shall have obtained the final order(s) of the Commission approving Aqua's consummation of the transactions contemplated by this Agreement and a license to operate the Water System Business issued by the OEPA.

**4.3 Delivery of Other Documents.** Aqua shall have delivered (i) to Seller a copy of its articles of incorporation certified by the Secretary of State of Ohio and a good standing certificate issued by such Secretary of State, each dated within ten (10) business days of the Closing Date, to confirm that Aqua is duly existing and in good standing as an Ohio corporation, (ii) to Seller the Purchase Price by wire transfer of immediately available funds delivered to the Title Agency as escrow agent, and (iii) the executed Assignment.

**4.4 Litigation Affecting Closing.** On the Closing Date, no proceeding shall be pending or threatened before any court or governmental agency in which it is sought to restrain or prohibit or to obtain damages or other relief in connection with this Agreement or the consummation of the transactions contemplated hereby, and no investigation that might eventuate in any such suit, action or proceeding shall be pending or threatened.

## **5. CONDITIONS PRECEDENT TO AQUA'S OBLIGATIONS**

All obligations of Aqua under this Agreement are subject to the fulfillment or satisfaction, or waiver by Aqua, prior to or at the Closing, of each of the following conditions precedent:

**5.1 Performance by Seller: Closing Certificate.** Seller shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing; and Aqua shall have been furnished with a certificate or certificates from Seller dated the Closing Date, signed by Seller, in form and substance reasonably satisfactory to Aqua, certifying and confirming, in such detail as Aqua may reasonably request, the fulfillment of the relevant conditions and that all representations and warranties of Seller in this Agreement are true and correct in all material respects as of the Closing Date.

**5.2 Litigation Affecting Closing.** On the Closing Date, no proceeding shall be pending or threatened by any third party before any court or governmental agency in which it is sought to restrain or prohibit or to obtain damages or other relief in connection with this Agreement or the consummation of the transactions contemplated hereby, and



no investigation that might eventuate in any such suit, action or proceeding shall be pending or threatened.

**5.3 Authorizations of Seller.** Seller shall have furnished Aqua with certified copies of all limited partnership proceedings of Seller authorizing the transactions hereby contemplated, as Aqua reasonably shall request. In addition, Seller shall have delivered any other certificates required to be delivered at Closing pursuant to this Agreement.

**5.4 Government Approvals.** Aqua shall have received any necessary orders from the Commission authorizing (a) the transfer of the Assets from Seller to Aqua as contemplated by this Agreement, (b) Aqua to provide water service to the Customers in the Service Area in accordance with the Commission's Tariff, Rules, Regulations and Rates; , and (c) the adoption of rates reasonably satisfactory to Aqua for providing such service, with such base rates being identified on Schedule 5.4 Aqua shall makes its best effort to establish the valuation of the Assets constituting the Water System Business under Section 4909.04, Ohio Revised Code as soon as possible following closing. Aqua shall also have received from the OEPA a license to operate the Water System Business in the Service Area. All such governmental authorizations, orders and approvals shall be final and in form and substance reasonably satisfactory to Aqua.

**5.5 Material Damage.** The Assets shall not be materially adversely affected by fire, explosion, earthquake, disaster, accident, flood, drought, lack of water supply, contamination of water supply, embargo, riot, civil disturbance, uprising, activity of armed forces, act of God or public enemy, or any other similar material adverse event or occurrence.

**5.6 Opinion of Counsel.** Seller shall provide Aqua with an opinion letter from its counsel in substantially the form attached hereto as Schedule 5.6

**5.7 Title.** Aqua shall not have objected (based on the standards set forth in Section 1.1) to matters set forth in the Commitment and the Survey regarding the Property or, if Aqua has so objected, Seller shall have failed to cure such objections within the time periods and in the manner set forth in Section 1.1.

**5.8 Amendments to Schedules.** Any amendments to the Schedules that are attached to this Agreement by Seller and that are delivered to Aqua prior to the Closing Date shall be reasonably satisfactory to Aqua.

**5.9 Customer Agreements.** Seller shall have executed and delivered to Aqua the Customer Agreements applicable to each Customer in the form attached hereto as Schedule 5.9. The parties stipulate and agree that each Customer has now executed a Customer Agreement.

## **6. REPRESENTATIONS AND WARRANTIES OF SELLER**

**6.1** Seller hereby represents and warrants that the following statements are true and correct as of the date hereof and shall be true and correct again as of the Closing Date:

- a. **Organization.** Seller is a limited partnership duly and validly existing and in good standing under the laws of the State of Ohio.

- b. **Due Authorization: Valid and Binding.** Seller has full limited partnership power and authority to execute this Agreement and to consummate and perform the transactions contemplated in this Agreement, and has duly and validly authorized the execution of this Agreement by all necessary limited partnership proceedings. This Agreement constitutes the valid and binding obligations of Seller enforceable against Seller in accordance with its terms.
- c. **Assets Ownership.** Seller holds good and marketable title to the Property and the various Assets identified on Schedule 1.1 free and clear of adverse claims of third parties, except for (a) the Permitted Exceptions, (b) defects of title that will not materially and adversely affect the ability of Aqua to own and operate the Water System Business following the Closing, and (c) liens and encumbrances to be removed by Seller at or prior to Closing.
- d. **Current Operations.** Seller has all requisite limited partnership power and authority and (except for failure to satisfy the PUCO Requirements) all material agreements, contracts, commitments, leases, certificates, assignments, permits and other instruments required to own and conduct the Water System Business as now being conducted and to own and operate the Assets.
- e. **Legal Authority.** Seller has full limited partnership power and authority to transfer to Aqua all of its rights, title and interest in and to the Assets.
- f. **No Approvals or Violations.** Except for failure to satisfy the PUCO Requirements, and subject to the Customers executing and delivering to Aqua the agreements on Schedule 5.9 Seller's (as opposed to Aqua's) performance under this Agreement shall not require further approvals of any other person, shall not violate any law, ordinance or regulation, shall not conflict with any order or decree issued by any court or governmental authority, and shall not conflict with or result in a breach of any contract, lease or permit to which Seller is a party.
- g. **Party to Decree.** Except for failure to satisfy the PUCO Requirements, Seller is not party to or subject to the provision of any judgment, order, writ, injunction or decree of any court or governmental office, agency, instrumentality or commission relating to the Assets (with the exception of a license to operate issued by the OEPA as generally applicable to water companies), and has received no notices of any violations issued by any governmental office, agency, instrumentality or commission related to its Water System Business.
- h. **Defeasance.** As of the Closing Date, all of Seller's obligations wherein Assets or revenues from the Water System Business are pledged as security will be paid off or released, and any and all liens and encumbrances on the Assets (other than the Permitted Exceptions) or revenues will have been removed.

- i. **Assets.** All right, title and interest of Seller in and to the Assets listed on Schedule 1.1 shall be transferred to Aqua at the Closing pursuant to the delivery of the Bill of Sale, the Limited Warranty Deed and the Assignment.
- j. **Customers and Records.** The Customers identified on Schedule 5.10 are the only customers of the Water System Business or of Seller. The data contained in the Customer records now or hereafter provided to Aqua is true and accurate in all material respects. Seller has delivered to Aqua true and complete copies of all records in Seller's possession (including title records) that relate to acquisition, construction, installation, maintenance, repair and operation of the Assets.
- k. **Title of Assets.** Seller owns and will convey to Aqua at the Closing good and marketable title (fee simple title for real property assets) to the Assets (excluding the Excluded Assets), free and clear of all mortgages, liens, pledges, security interests, charges, encumbrances, covenants, restrictions, agreements and claims of any nature whatsoever, other than the Permitted Exceptions and the other items enumerated in Section 6.1(c).
- l. **Liabilities.** Except for the obligations under the Assumed Contracts listed on Schedule 1.5 and obligations of Seller that are canceled at or prior to the Closing Date, at the Closing there shall exist no liabilities or obligations of Seller, whether accrued, absolute, contingent or otherwise, relating to the Assets. For purposes of this section, the term "liabilities" shall mean any direct or indirect indebtedness, guaranty, endorsement, claim, loss, deficiency, cost, expense, obligation or responsibility, accrued, absolute, contingent or otherwise.
- m. **Condition of Assets.** The Assets are generally in good working order and operating condition, ordinary wear and tear excepted and giving due consideration to the ages of the items constituting the Assets. Except for its failure to satisfy the PUCO Requirements, Seller is not aware of any violations and has received no notices of violations of any applicable laws, ordinances, codes, zoning rules or regulations relating to the construction, use or operation of the Assets, other than any violations that would not have a material adverse effect on Aqua's ability to use and operate the Assets after Closing.
- n. **Water Quality.** The quality of the source(s) of supply are in compliance with the maximum contaminant levels for primary contaminants established by the Safe Drinking Water Act, as amended, and all applicable laws of the U.S. Environmental Protection Agency, the Ohio Environmental Protection Agency or other applicable Administrative Agencies, whether local, state, or federal.
- o. **Adequacy of Rights.** As of the date hereof and as of the Closing Date, except the water supply agreements between Seller and the Customers, each of whom are in default for failure to timely pay for water service when due, all agreements, contracts, commitments, leases, certificates,

permits and other instruments related to the Assets to which Seller is a party shall be valid and enforceable in accordance with their terms, shall be in good standing, and the parties thereto shall be in compliance with the provisions thereof. Except as set forth in the previous sentence, no party shall be in default in the performance, observance or fulfillment of any material obligation, covenant or condition contained therein, and no event shall have occurred, which with or without the giving of notice or lapse of time, or both, would constitute a default thereunder.

- p. **Adequacy of Property Rights.** To the knowledge of Seller upon completion of Seller's review of the ALTA Survey prior to closing, all leases, licenses, rights-of-way and easements related in any manner to the Property and all other instruments, documents and agreements pursuant to which Seller has obtained the right to use any the Property in connection with the Assets are valid and effective in accordance with their respective terms, and with respect thereto, there is no existing default or event which with or without the giving of notice or lapse of time, or both, would constitute a material default thereunder.
- q. **Pending Litigation.** Except for its failure to satisfy the PUCO Requirements, there are no pending actions or proceedings (judicial or administrative) against Seller regarding the Assets or Seller's ability to operate or transfer the Assets.
- r. **Threatened Litigation.** Except for its failure to satisfy the PUCO Requirements, to the knowledge of Seller there are no threatened actions, investigations or proceedings (judicial or administrative) regarding the Assets or Seller's ability to operate or transfer the Assets.
- s. **Contract for Refunds.** Except for the Assumed Contracts listed on Schedule 1.5, Seller is not a party to any material written contracts or other written agreements for future payments with respect to the Assets.
- t. **Contracts with Others.** Except for the Assumed Contracts listed on Schedule 1.5, Seller is not a party to any contract for the purchase of, or payment for supplies, equipment or for services related to the Assets.
- u. **Employees; Labor Contracts.** Seller has no employees. Seller is not a party to any contract, commitment or arrangement that will survive the Closing with any labor union or other representative of employees with respect to the Assets or the Water System Business.
- v. **Non-Assumed Contracts.** Seller shall be responsible for any commitments Seller has made pursuant to any written or oral contract or agreement not included within the Assumed Contracts.
- w. **Compliance with Law.** Except for its failure to satisfy the PUCO Requirements, there exists no material violation or noncompliance with laws and regulations applicable to the Assets, and there exist no material environmental problems or concerns relating to the Assets.

- x. **Labor Disputes.** To the knowledge of Seller, there is no existing employment-related litigation or administrative proceeding pending against Seller related to the Assets or the transfer of the Assets to Aqua.
- y. **Special Agreements.** Except for the Assumed Contracts listed on Schedule 1.5, Seller is not a party to any special agreements with the Customers whereby the Customers have prepaid for items in connection with water pipelines or service (and Seller acknowledges Aqua shall have no financial liability as a result of any such contracts other than the Assumed Contracts).
- z. **Documents Produced.** Seller has delivered to Aqua true and complete copies of all material agreements, contracts, commitments, leases, records, books, journals, certificates and permits in its possession relating to ownership or operation of the Assets.

## 6.2 Environmental Matters.

- a. Except as set forth on Schedule 6.2 attached hereto, to the actual knowledge of Seller:
  - (i) no "Hazardous Substance" (as hereinafter defined) has been disposed of on, generated on, treated on, buried beneath or percolated beneath real estate included in the Property;
  - (ii) no such disposal, generation, treatment, burial or percolation has been threatened; and
  - (iii) there has been no "Release" (as hereafter defined) thereof on or near any Property. Except as set forth on Schedule 6.2, Seller and all owners and users of the Property are and have been in compliance with all applicable federal, state and local laws, administrative rulings and regulations of any court, administrative agency or other governmental or quasi-governmental authority relating to the protection of the environment (including, but not limited to, laws prohibiting the creation of a public nuisance). Attached to Schedule 6.2 are copies of all correspondence between Seller and the United States Environmental Protection Agency or the Ohio Environmental Protection Agency relating to the Assets. Neither Seller nor any past or present owner or user of the Property is a potentially responsible party under Section 107 of the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended ("CERCLA") or is or has been subject to an action under Section 7003 of the Resource Conservation and Recovery Act of 1976, as amended ("RCRA") and neither Seller nor any past or present owner of the Property has received notification from any federal, state or local government, agency or regulatory body of a violation under any federal, state or local law regulating the release, disposal or discharge of any toxic, explosive or other hazardous substance. No "environmental condition" (as hereinafter defined) exists in or near the Property.

- b. To the knowledge of Seller, except as set forth on Schedule 6.2 the Property is free from the harmful effects of asbestos or asbestos- containing materials.
- c. Except as set forth on Schedule 6.2 to the knowledge of Seller no underground storage tanks (as hereafter defined) are now present on or beneath the premises of the Property.
- d. For purposes of this Agreement:
  - (i) "Hazardous Substance" means any one or more of (a) any substance defined as a hazardous substance under Section 101 (14) of CERCLA; (b) any other substance deemed hazardous by the United States Environmental Protection Agency pursuant to Section 102(a) of CERCLA; (c) petroleum (including crude oil or any fraction thereof); (d) any substance deemed hazardous pursuant to Section 1004(5) or RCRA; (e) any substance regulated under the Toxic Substance Control Act, as amended; or (f) any other hazardous or toxic substance, materials, compound, mixture, solution, element, pollutant or waste regulated under any federal, state or local statute, ordinance or regulation;
  - (ii) "Release" shall have the meaning given to such term in Section 101 (22) of CERCLA;
  - (iii) "Underground Storage Tanks" shall be as defined in Ohio Administrative Code 1301 .7-9-02(B)(52); and
  - (iv) "Environmental Condition" shall mean conditions of the environment, including natural resources (including flora and fauna), soil, surface water, groundwater, any present or potential drinking water supply, subsurface strata or the ambient air, relating to or arising out of the use, handling, storage, treatment, recycling, generation, transportation, spilling, leaking, pumping, pouring, emptying, discharging, injecting, disposal, dumping, release or threatened release of Hazardous Substances upon or near the Real Property by Seller or Sellers agents, lessees, representatives, employees, independent contractors or (to the best of Seller's knowledge) predecessors in interest.

Seller shall cooperate with Aqua (at Aqua's sole expense) to the extent reasonably necessary for Aqua to perform reasonable environmental site assessments of the Property, including requesting further approvals if needed from any necessary parties for the performance by Aqua of any environmental site assessment. Aqua by virtue of performing any environmental site assessment does not assume the responsibility of the person in charge of Seller's Property, or otherwise undertake responsibility for reporting to any federal, state or local public agencies any conditions on the Property that may present a potential threat to public health, safety or the environment. Aqua assumes no liability or responsibility for any Hazardous Substances found at, on, in, under, above, about or adjacent to any Property including liability for any other conditions which may be present thereon.

## **7. REPRESENTATIONS AND WARRANTIES OF AQUA**

### **7.1 Aqua hereby represents and warrants to Seller as follows:**

- a. **Organization; Authority.** Aqua is a corporation duly organized, validly existing and in good standing under the laws of the State of Ohio. Aqua has all requisite corporate power and authority to enter into and to perform its obligations under this Agreement and under all other agreements and instruments contemplated hereby.
- b. **Due Authorization: Valid and Binding.** Aqua has the requisite corporate power and authority to execute this Agreement and to consummate and perform the transactions contemplated by this Agreement and has duly and validly authorized the execution of this Agreement by all necessary corporate proceedings. This Agreement constitutes, and at the Closing this Agreement and the Assignment shall constitute, the valid and binding obligations of Aqua enforceable against Aqua in accordance with its terms.
- c. **No Approvals or Violations.** Subject to receipt of the order(s) by the Commission and the OEPA license referred to in Section 5.4, and any other necessary regulatory authority, Aqua's (as opposed to Seller's) performance under this Agreement shall not require further approvals of any other person, shall not violate any law, ordinance or regulation, shall not conflict with or constitute a breach or default under any order or decree issued by any court or governmental authority, and shall not conflict with or result in a breach of or default under any contract, agreement, lease, license or permit, to which Aqua or any affiliate of Aqua (within the meaning of federal securities laws) is a party or subject.
- d. **Party to Decree.** Except as set forth on Schedule 7.1(d), Aqua is not a party to or subject to the provision of any judgment, order, writ, injunction or decree of any court or governmental office, agency, instrumentality or commission, that relates to its conduct of business as a water company or its operation as a public utility that might have a material adverse effect on its ability consummate the transactions contemplated hereby, to acquire the Assets or to operate the Water System Business.

## **8. REIMBURSEMENT AND INDEMNIFICATION**

**8.1 Reimbursement and Indemnification Obligations of Aqua.** From and after the Closing Date, Aqua shall reimburse, indemnify and hold harmless Seller, and its officers, partners and employees, from and against any and all liabilities, obligations, damages, losses, actions, audits, deficiencies, claims, fines, costs and expenses, including reasonable fees and costs of attorneys, consultants and experts in all tribunals and whether or not legal proceedings are commenced by or against any person (collectively, "Adverse Consequences"), resulting from, relating to or arising out of:

- a. All matters related to the provision of water service by Aqua to its customers following the Closing, or the failure to so provide such service, provided that the failure to provide such service is not due in whole or in material part to any act, negligence, fault, omission, misrepresentation, criminal misconduct or willful act of Seller not disclosed in or pursuant to this Agreement either before or after the Closing Date;

- b. Regulatory compliance for events that occur following the Closing Date that are not attributable to events that occurred or accrued prior to the Closing Date, including any liabilities or obligations enforced by the Commission relating to events that occur after the Closing Date;
- c. Any misrepresentation, breach of warranty or nonfulfillment of any agreement or covenant on the part of Aqua under this Agreement or under the Assignment, or from any misrepresentation in, or omission from, any Schedule, document or information furnished to Seller pursuant to this Agreement or the Assignment, including the failure of Aqua to perform any of its covenants hereunder or under the Assignment before or after the Closing Date;
- d. Any claims brought by any third parties that are attributable to actions or omissions on the part of Aqua in conducting the Water System Business or operating the Assets after the Closing Date;
- e. Any breach by Aqua or by its Representatives of the confidentiality and non-disclosure obligations as to Seller's Confidential Information contained in Section 3(i), whether such breach occurs before or after termination of this Agreement; or
- f. The successful enforcement of this Section 8.1 by Seller.

**8.2 Reimbursement and Indemnification Obligations of Seller.** From and after the Closing Date, Seller will reimburse, indemnify and hold harmless Aqua and its officers, directors and employees, from and against any and all Adverse Consequences, resulting from, relating to or arising out of:

- a. Any liabilities or obligations of Seller of any nature whatsoever, except for those liabilities and obligations of Seller that Aqua specifically assumes pursuant to this Agreement and the Assignment (including those arising under the Assigned Contracts);
- b. All matters related to the provision of water service by Seller to its customers prior to the Closing or the failure to provide such service prior to Closing or the failure of Aqua to provide such service after Closing where such failure is due in whole or in material part to any act, omission, negligence, fault, misrepresentation, criminal misconduct or willful act of Seller or its agents not disclosed in or pursuant to this Agreement;
- c. Any misrepresentation, breach of warranty or nonfulfillment of any agreement or covenant on the part of Seller under this Agreement, the Bill of Sale, the Limited Warranty Deed, or from any misrepresentation in, or omission from, any Schedule, document or information furnished to Aqua pursuant to this Agreement;
- d. Any claims by any third party in any way asserting a claim to the Purchase Price except any claims resulting from any act of Aqua other than Aqua exercising its right to close pursuant to this Agreement;



- e. Issues of regulatory compliance for events, and claims by third parties for events that occurred prior to the Closing Date (other than those arising out of Seller's failure to satisfy the PUCO Requirements);
- f. The provision of water service by Seller for the period prior to the Closing Date (other than those arising out of Seller's failure to satisfy the PUCO Requirements);
- g. Any claim by any present or former employee of Seller relating to his or her employment with Seller;
- h. The pay-off or defeasance of Seller's debt obligations of any kind, including as surety or guarantee;
- i. Seller's failure to perform any of its covenants hereunder or under the Bill of Sale, the Assignment or the Limited Warranty Deed following the Closing; or
- j. The successful enforcement of this Section 8.2 by Aqua.

**8.3 General.** In the event of a default by any party to this Agreement, the non-defaulting party shall have the right to pursue all legal and equitable remedies against the defaulting party, including the right to obtain specific performance of such party's obligations contained in this Agreement. The party who is deemed to be in default shall first be given written notice of the claimed default, and a period of 30 days to cure, if the matter is capable of cure, before suit may be brought to enforce the rights of the non-defaulting party. In the event an injunction is necessary to maintain the status quo while the cure period is pending, such proceeding may first be filed before the cure period expires.

**8.4 Procedures for Third Party Claims.** Any party seeking indemnification pursuant to this Section 8 (the "Indemnified Party") in respect of any legal proceeding, action, claim or demand (in each case, a "Claim") instituted by any third person or governmental entity shall give the party from whom indemnification with respect to such claim is sought (the "Indemnifying Party") (i) prompt written notice (but in no event more than twenty (20) days after the Indemnified Party acquires knowledge thereof) of such Claim and (ii) copies of all documents and information relating to any such Claim within twenty (20) days of their being obtained by the Indemnified Party; provided, that the failure by the Indemnified Party to so notify or provide copies to the Indemnifying Party shall not relieve the Indemnifying Party from any liability to the Indemnified Party for any liability hereunder except to the extent that such failure shall have actually prejudiced the defense of the Claim.

The Indemnifying Party shall have the right, at its option and expense, to defend against, negotiate, settle or otherwise deal with any Claim with respect to which it is the Indemnifying Party and to be represented by counsel of its own choice, and the Indemnified Party will not admit any liability with respect thereto or settle, compromise, pay or discharge the same without the consent of the Indemnifying Party, which consent shall not be unreasonably withheld, conditioned or delayed, so long as the Indemnifying Party is contesting or defending the same with reasonable diligence and in good faith. The Indemnified Party may participate in any proceeding with counsel of its choice and

at its expense. The Indemnifying Party may not enter into a settlement of any such claim without the consent of the Indemnified Party, which consent shall be not unreasonably withheld, conditioned or delayed, unless such settlement requires no more than a monetary payment for which the Indemnified Party is fully indemnified by the Indemnifying Party or involves other matters not binding upon the Indemnified Party. In the event the Indemnifying Party does not, within fifteen (15) days after it receives written notice of the Claim from the Indemnified Party, agree in writing to accept the defense of, and assume all responsibility for, such Claim as provided in this section, then the Indemnified Party shall have the right to defend against, negotiate, settle or otherwise deal with the Claim in such manner as the Indemnified Party deems appropriate in its sole discretion, and the Indemnified Party shall be entitled to indemnification therefor from the Indemnifying Party under this Section 8.

**8.5 Dollar Limits on Indemnification and Reimbursement Obligations.**

Neither party shall have any liability, for indemnification, reimbursement or otherwise, with respect to the matters described in this Section 8 until the total of all Adverse Consequences suffered by such party related to such indemnification claims exceeds, in the aggregate, \$20,000.00 (the "Threshold"), in which event the indemnity obligations of the appropriate party shall apply only to all such Adverse Consequences suffered in excess of the Threshold. Notwithstanding the foregoing, the Threshold shall not apply to any claim for indemnification made by the Buyer with respect to a breach or alleged breach by Seller of the representations and warranties in the Limited Warranty Deed. Neither party will have any further liability to the other for indemnification or reimbursement with respect to the matters described in this Section 8 after such party shall have paid an amount equal to the fifty-eight percent (58%) of the Purchase Price.

**8.6 No Solicitation of Indemnification Claims.** Neither Aqua nor Seller shall affirmatively solicit claims from regulators, customers or other third parties having business relationships with Seller or Aqua for the purpose of creating claims for indemnification for which Seller or Aqua would be responsible under Section 8 of this Agreement.

**8.7 Obligation to Mitigate Damages; Effect of Tax Savings and Insurance.** Each party shall use commercially reasonable efforts to mitigate any Adverse Consequences suffered for which a claim may be made under this Section 8. In computing Adverse Consequences suffered by a party, the amount of Adverse Consequences shall be reduced on a dollar-for-dollar basis by any insurance payments received and by federal and state income tax savings that result from such Adverse Consequences.

**9. SURVIVAL OF REPRESENTATIONS AND WARRANTIES**

All representations, warranties, covenants and agreements, and the reimbursement and indemnification obligations made by the parties in this Agreement or in any agreement, document or certificate furnished hereunder shall survive the Closing or any termination of this Agreement until April 15, 2009. Any claim for breach of such representations, warranties, covenants and agreements shall be made in writing with reasonable specificity on or before April 15, 2009 or shall be forever barred.

**10. TERMINATION**

**10.1 Termination of Agreement.** The parties may terminate this Agreement as provided below:

- (i) Aqua and Seller may terminate this Agreement by mutual written consent at any time prior to the Closing;
- (ii) Aqua may terminate this Agreement by giving written notice to Seller at any time prior to the Closing in the event (A) Seller has within the then previous ten (10) business days given Buyer a notice pursuant to Section 3(f), and (B) the development that is the subject of the notice has had a material adverse effect upon the Assets or the Water System Business taken as a whole.
- (iii) Aqua may terminate this Agreement by giving written notice to Seller at any time prior to the Closing (A) in the event Seller has breached any material representation, warranty, or covenant contained in this Agreement in any material respect, Aqua has notified Seller of the breach, and the breach has continued without cure for a period of 30 days after notice of breach, (B) if Aqua has properly objected to title to the Property as shown on the Commitment and/or the Survey as permitted by Section 1.1, and Seller has failed to cure the objection within the period contemplated by such section, or (C) if the Closing shall not have occurred on or before July 15, 2007, by reason of the failure of any condition precedent under Sections 5.1 through 5.5, including the failure of the Commission to issue the order(s) referred to in Section 5.4 (unless the failure results primarily from Aqua itself breaching any representation, warranty or covenant contained in this Agreement); and
- (iv) Seller may terminate this Agreement by giving written notice to Aqua at any time prior to the Closing (A) in the event Aqua has breached any material representation, warranty, or covenant contained in this Agreement in any material respect, Seller has notified Aqua of the breach, and the breach has continued without cure for a period of thirty (30) days after the notice of breach or (B) if the Closing shall not have occurred on or before July 15, 2007 by reason of the failure of any condition precedent under Sections 4.1 through 4.4, including the failure of the Commission to issue the order(s) referred to in Section 5.4 (unless the failure results primarily from Seller itself breaching any representation, warranty or covenant contained in this Agreement).

**10.2 Effect of Termination.** If either party terminates this Agreement pursuant to Section 10.1, all rights and obligations of the parties hereunder shall terminate without any liability of any party to any other party (except for any liability of any party then in breach); provided, however, that the confidentiality and non-disclosure obligations of Aqua with respect to Seller's Confidential Information contained in Section 30) and the indemnification obligations of Aqua associated therewith under Section 8.1(e) shall survive termination of this Agreement.

## **11. MISCELLANEOUS**

**11.1 Contents of Agreement; Parties in Interest; etc.** This Agreement sets forth the entire understanding of the parties hereto with respect to the transactions contemplated hereby. It shall not be amended or modified except by written instrument duly executed by each of the parties hereto. Any and all previous agreements and understandings between or among any or all of the parties regarding the subject matter hereof, whether written or oral, are superseded by this Agreement.

**11.2 Binding Effect.** All of the terms and provisions of this Agreement shall be binding upon, inure to the benefit of and be enforceable by the respective legal representatives, successors and permitted assigns of Seller and Aqua. Neither party shall assign this Agreement or its rights and obligations hereunder without the prior written consent of the other party.

**11.3 Waiver.** Any term or provision of this Agreement may be waived at any time by the party or parties entitled to the benefit thereof by a written instrument executed by such party or parties.

**11.4 Notices.** Any notice, request, demand, waiver, consent, approval or other communication which is required or permitted hereunder shall be in writing and shall be deemed given only if delivered personally or sent registered or certified mail, postage prepaid, return receipt requested, or by any national overnight delivery service, as follows:

If to Aqua to:

Walter J. Pishkur, President  
Aqua Ohio, Inc.  
6650 South Avenue  
Boardman, Ohio 44512

With a required copy to:

Alan D. Wenger, Esquire  
Harrington, Hoppe & Mitchell Limited  
26 Market Street, Suite 1200  
Youngstown, Ohio 44503

If to Seller to:

Michael J. Laskey  
Auburn Lakes Limited Partnership  
25700 Science Park Drive, Suite 270  
Beachwood, Ohio 44122

With a required copy to:

Dale H. Markowitz, Esq.  
Thrasher, Dinsmore & Dolan  
100 7 Avenue, Suite 150  
Chardon, Ohio 44024-1079

or to such other address as the addressee may have specified in a written notice duly given to the sender as provided herein. Such notice, request, demand, waiver, consent, approval or other communication will be deemed to have been given as of the date so delivered or mailed.

**11.5 Ohio Law to Govern.** This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the State of Ohio, without giving effect to any conflict of law provisions.

**11.6 No Benefit to Others.** The representations, warranties, covenants and agreements contained in this Agreement are for the sole benefit of the parties hereto, and their legal representatives, successors and permitted assigns, and they shall not be construed as conferring any rights on any other persons or entities.

**11.7 Numbers and Gender; Construction.** Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires. As used herein the term "including" shall mean "including without limitation." References herein to a "Section" shall mean a Section within this Agreement unless the context otherwise requires. References to any statute or other law shall include a reference to any and all rules, regulations and policies promulgated thereunder.

**11.8 Exhibits and Schedules.** All Exhibits and Schedules referred to herein are intended to be and hereby are specifically made a part of this Agreement.

**11.9 Severability.** Any provision of this Agreement that is invalid or unenforceable in any jurisdiction or under any circumstance shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof, and any such invalidity or unenforceability in any jurisdiction or under any circumstance shall not invalidate or render unenforceable such provision in any other jurisdiction or under any other circumstance, unless, in either event, the involved or unenforceable provision causes this Agreement to fail of its essential purpose.


**11.10 Counterparts.** This Agreement may be executed in any number of counterparts and any signatory hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. This Agreement shall become binding when one or more counterparts taken together shall have been executed and delivered by all signatories. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for any of the other counterparts.

**IN WITNESS WHEREOF**, intending to be legally bound, the parties hereto have duly executed this Agreement on the date first written.

**AUBURN LAKES LIMITED PARTNERSHIP**

By:   
Name: Dan K. Silverberg  
Title: Managing General Partner

**AQUA OHIO, INC.**

By:   
Name: Walter J. Piskur  
Title: President

## **INDEX OF EXHIBITS AND DISCLOSURE SCHEDULES**

<b>Exhibit A</b>	<b>Form of Assignment and Assumption Agreement</b>
<b>Exhibit B</b>	<b>Form of Bill of Sale</b>
<b>Exhibit C</b>	<b>Easement</b>
<b>Schedule R-A</b>	<b>Map and Description of Service Area</b>
<b>Schedule 1.1</b>	<b>List of Assets, Properties and Rights</b>
<b>Schedule 1.5</b>	<b>Assumed Contracts</b>
<b>Schedule 5.4</b>	<b>Rates and Fees</b>
<b>Schedule 5.6</b>	<b>Opinion Letter from Seller's Counsel</b>
<b>Schedule 6.2</b>	<b>Environmental Matters</b>
<b>Schedule 7.1(d)</b>	<b>Decrees and Orders Applicable to Aqua</b>

## **Schedule R-A**

### **Map and Description of Service Area**

1. **Map of Service Area – See Exhibit "1" attached to this schedule.**

**[to be added]**

2. **Territorial Description for Service Area – The Auburn Lakes Condominium, The Woods at Auburn Lakes Condominium and the Auburn Crossings Condominium.**



## **Schedule 1.1**

### **List of Assets, Properties and Rights**

#### **I. PRODUCTION FACILITIES**

- A. Three (3) permitted and fully functioning wells (##2, 3 and 4).
- B. One (1) inactive (#1) well.
- C. One (1) permitted and fully functioning treatment facility and associated pumping/electrical equipment and other related equipment.
- D. One (1) inground storage facility (clearwell) with storage of 150,000 gallons.

#### **II. DISTRIBUTION SYSTEM**

- A. All existing wells, water mains and related appurtenances owned by Seller, if any, located within the three (3) Customers' condominium developments (i.e., The Auburn Lakes Condominium Association, The Woods at Auburn Lakes and Auburn Crossing) and including wells 5 and 6.
- B. Seller's right, title and interest (if any) in and to all water mains (proposed or existing) (it being understood that the water mains themselves may be owned by the Customers and not by Seller), and related appurtenances that extend beyond the limits of the roads enumerated above.
- C. All valves, fittings, blow-offs, regulators, fire hydrants, vaults, and other related appurtenances.
- D. A minimum of three hundred and seventy (370) active customers within the three Customers' associations.
- E. A maintenance building located on Baybrook Lane.

#### **III. THE PROPERTY**

- A. Parcels of land - in fee - for the production facilities identified in "I" and "II", if any, are referenced above.
- B. The Easement for the Pointe Breeze private drive portion of Parcel No. 01-002170.

#### **IV. MISCELLANEOUS**

- A. Items referenced in § 2.1 of this Agreement, including billing records for the Customers;
- B. Maps and records of the existing and/or proposed production facilities, distribution system, and the Property;
- C. Any and all keys for the Assets;

D. Any and all files relating to the Assets;

**Schedule 1.5**

**LIST OF ASSUMED CONTRACTS**

NONE

#### **Schedule 5.4**

##### **Monthly Rates (All Subject to Applicable Commission Approval)**

	<b>Units</b>	<b>Rate/Unit<sup>1</sup></b>	<b>Monthly Bill</b>
1. The Auburn Lakes Condominium Association	154	\$39.99	\$6158.46
2. The Woods at Auburn Lakes	146	\$39.99	\$5838.54
3. Auburn Crossing	70	\$39.99	\$2799.30

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<sup>1</sup> This is the amount charged to customers, but they only pay \$23/month since early 2006, but the Woods has not paid anything since December 2005, Auburn Lakes Condominium has been paying for the most part, \$24.15/month/unit and Auburn Crossings has been paying for the most part, \$23.84/month/unit.

**Schedule 5.6**

**Opinion Letter from Seller's Counsel**

[Letterhead of Seller's Counsel]

[Closing Date]

Aqua, Inc.  
[Address]  
[City, State and Zip Code]

Re: Assets Purchase Agreement

Gentlemen and Ladies:

We have acted as special Ohio legal counsel to Auburn Lakes Limited Partnership, an Ohio limited partnership ("Seller"), in connection with that certain Assets Purchase Agreement (the "Agreement") dated as of November \_\_, 2007, between Aqua, Inc., an Ohio corporation ("Purchaser"), and Seller, and in connection with the consummation of the transactions contemplated thereby. Unless otherwise defined herein, capitalized terms used herein shall have the same meaning as set forth in the Agreement. This letter is being delivered to you at Seller's request pursuant to Schedule 5.6 of the Agreement.

We have examined the Agreement and all exhibits and schedules thereto, the closing certificates, and the other documents delivered by Seller pursuant to the Agreement, including, without limitation, the Transaction Documents (as defined below). As to various questions of fact material to our opinion we have relied upon certificates of the general partner or officers of Seller. We have also examined such certificates of public officials, corporate documents and records, other certificates and instruments, matters of law, and have made such other investigations as we have deemed necessary in connection with the opinions hereinafter set forth. In making such examination, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, and the conformity to original documents of all documents submitted to us as certified or photocopies.

Please be advised, however, that we have also relied upon written certifications made by the general partner or officers of Seller as to various questions of fact material to the matters set forth below, and we have not assumed any responsibility for making any independent investigation or verification of any factual matter stated in or represented by any of such certificates, except to obtain where we deemed appropriate written representations or certificates of appropriate public officials.

Based on and subject to the foregoing and upon such investigation as we have deemed necessary, we hereby advise you as follows:

1. We are of the opinion that Seller is a limited partnership duly formed, validly existing and in good standing under the laws of the State of Ohio. We are of the opinion that Seller has all requisite limited partnership power and authority necessary to enable Seller to carry on its business as now being conducted and to own, lease or operate its properties in connection with such business.

2. We are of the opinion that Seller has the limited partnership power and authority to enter into the Agreement, the Limited Warranty Deed, the Assignment and the Bill of Sale, and the other documents required by the Agreement to be delivered by Seller at Closing (collectively, the "Transaction Documents") and to perform the transactions contemplated thereby. We are of the opinion that all limited partnership proceedings required to be taken by Seller or its partners to authorize the execution, delivery and performance of the Transaction Documents have been duly and properly taken, that the Transaction Documents are duly executed and delivered by Seller, and that each of the Transaction Documents constitutes a valid and binding obligation of Seller enforceable against it in accordance with its terms, except as enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors rights generally, and the possibility that courts may not enforce obligations with respect to indemnification because of considerations of public policy, (ii) the effect of general principles of equity and rules of law regarding specific performance, injunctive relief and other equitable remedies on the enforceability of obligations, regardless of whether such enforceability is considered in a proceeding in equity or at law, (iii) the possibility that some Ohio courts will not enforce provisions requiring that amendments or modifications of agreements only be by written instrument signed by the parties to the agreement, and (iv) the possibility that some Ohio courts will not enforce provisions requiring payment of attorneys' fees, courts costs, or expenses of consultations, litigation or preparation therefor.

3. We are of the opinion that the Agreement, the Limited Warranty Deed, the Assignment, the Bill of Sale and the other Transaction Documents are duly authorized, executed and delivered by Seller and are in appropriate form under the laws of the State of Ohio to convey to Purchaser all of the right, title and interest of Seller in the Assets purported to be conveyed thereby, it being understood that we make no representation and express no opinion herein as to Seller's right, title or interest in any Seller's Assets purported to be conveyed thereby.

4. To the best of our knowledge, except for the failure of Seller to satisfy the PUCO Requirements, (a) there is no claim, legal action, suit, arbitration, governmental investigation or other legal or administrative proceeding, nor any order, decree or judgment in progress, pending or in effect, against or relating to Seller, its officers, partners or employees, the Water System Business conducted by Seller, Seller's Assets, or the transactions contemplated by the Agreement and the other Transaction Documents, and (b) we have no knowledge of any such claim, legal action, suit, arbitration, governmental investigation or other legal or administrative proceeding which has been threatened against Seller or Seller's Assets.

5. We are of the opinion that the execution, delivery and performance of the Agreement and the other Transaction Documents, and the transfer of Seller's Assets to Purchaser pursuant thereto, do not and will not conflict with the rights of any other person, firm or entity (assuming that the Customers have duly and validly authorized, executed and delivered the agreements attached to Schedule 5.9 of the Agreement), or violate, or with or without the giving of notice or the passage of time, or both, violate, conflict with or result in a default of, right to accelerate or loss of rights under, (i) any terms or provisions of Seller's agreement of limited partnership, (ii) any lien, encumbrance, mortgage, deed of trust, lease, license, agreement or understanding that is binding upon Seller and known to us, (iii) except for Seller's failure to satisfy the PUCO Requirements, any federal or Ohio law, ordinance, rule or regulation, or (iv) except for Seller's failure to satisfy the PUCO Requirements, any order, judgment or decree which is known to us

to which Seller is a party or by which it or Seller's business or Seller's assets may be bound or affected.

Members of our firm are admitted to the bar in the State of Ohio. We have undertaken no investigation of and express no opinion as to the laws of any other jurisdiction other than the laws of the State of Ohio and the federal laws of the United States of America.

The opinions and representations contained herein are rendered only as of the date hereof, and we undertake no obligation to update our opinions and representations after the date hereof. The opinions and representations contained herein only constitute our professional judgment as to the matters set forth herein, and should not be considered to be a guarantee of any particular result.

This opinion is only for the information of the addressee and solely in connection with the consummation of the transactions contemplated by the Agreement, and may not be relied upon or distributed to any other person or for any other purpose without the express written consent of this firm.

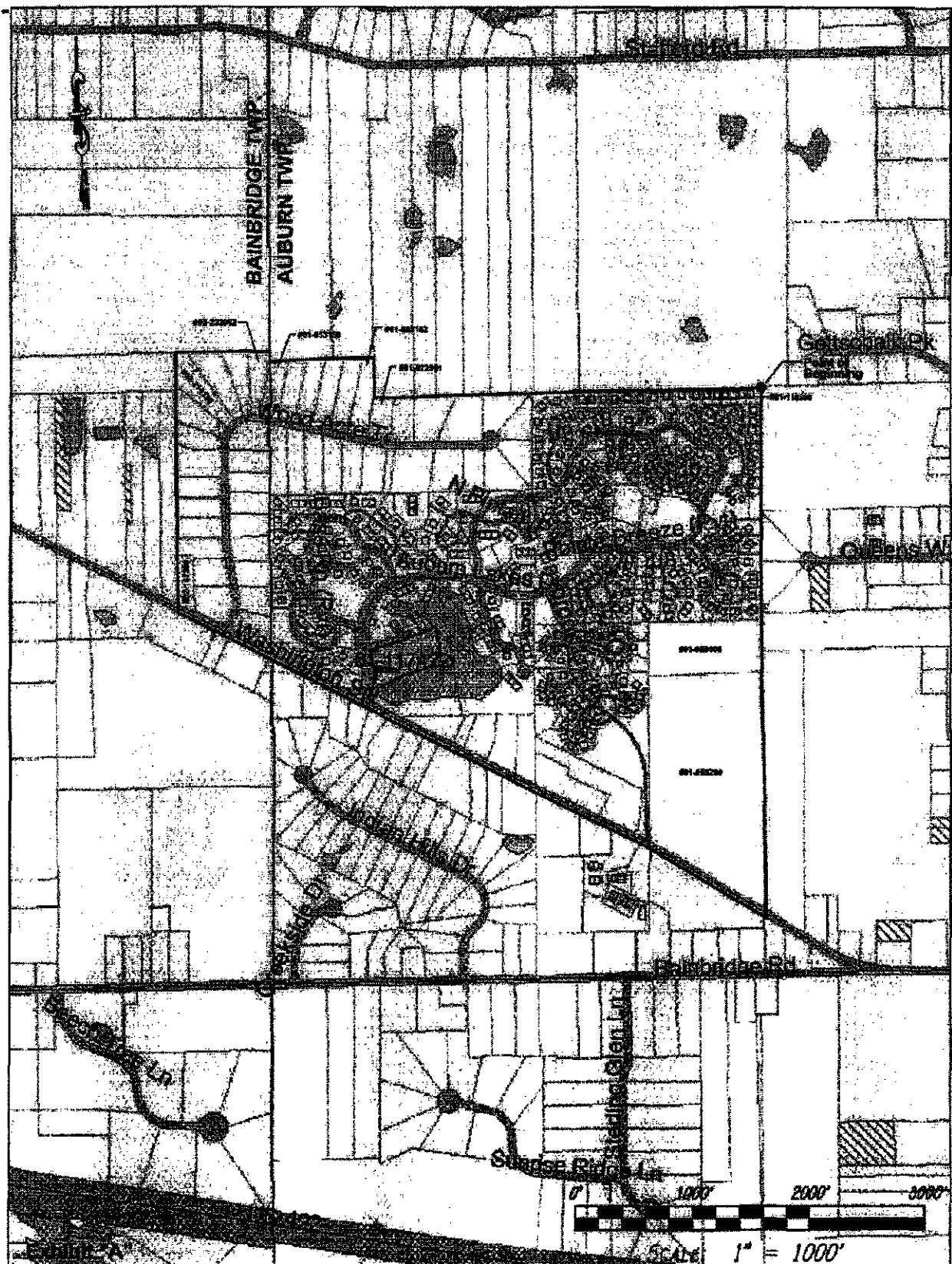
Very truly yours,

## **Schedule 5.9**

**Agreements with Customers (forms attached).**



P.U.C.O. TARIFF NO. 1



Issued:

Effective:

Issued by Walter J. Pishkur, President, Consumers Ohio Water Company  
In accordance with the Public Utilities Commission of Ohio  
Order Dated \_\_\_\_\_ for Case No. 06-\_\_\_\_-WW-AEC

**EXHIBIT B**

P.U.C.O. TARIFF NO. 1

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DESCRIPTION OF SERVICE AREA FOR:

THE WOODS AT AUBURN LAKES CONDOMINIUM DEVELOPMENT

AUBURN LAKES CONDOMINIUM DEVELOPMENT

AUBURN CROSSING CONDOMINIUM DEVELOPMENT

*Beginning at a point, said point being the northeast most corner of parcel 01-118568 in the Woods of Auburn Lakes located in Auburn Township, Geauga County, Ohio;*

*Thence continue west along the northernmost lot lines for a distance of approximately 3307 feet to a point at the northwest most corner of parcel 01-072991;*

*Thence north for a distance of approximately 330 feet to a point at the northeast most corner of parcel 01-053152;*

*Thence west for a distance of approximately 893 feet along the northern lot lines to a point at the northwest corner of parcel 01-053150;*

*Thence continue north approximately 80 feet to the northeast corner of parcel 02-232952 to a point;*

*Thence west along the northernmost lot lines for a distance of approximately 800 feet to a point at the northwest corner of parcel 02-216190;*

*Thence continue in a southerly direction approximately 2,176 feet along the westernmost lot lines of properties along Wood Acres Trail and parcel 02-187300 to a point on the south right of way line of Washington Street;*

*Thence continue in a southeasterly direction along said Right of Way line of Washington Street approximately 5,700 feet to a point;*

*Thence north along the easternmost lot lines of parcels 01-059200, 01-059100 and parcels within the Woods of Auburn Lakes to a point, being the place of beginning.*

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Issued:

Effective:

Issued by Walter J. Pishkur, President, Consumers Ohio Water Company  
In accordance with the Public Utilities Commission of Ohio  
Order Dated \_\_\_\_\_ for Case No. 06-\_\_\_\_-WW-AEC

**PROPOSED REVISED SUBJECT INDEX PAGE**

**EXHIBIT C-1**

**TO BE LATE FILED**

P.U.C.O. TARIFF NO. 1

Rate for customers residing in The Woods of Auburn Lakes Condominium Development, the Auburn Lakes Condominium Development, and the Auburn Crossing Condominium Development

1. Any and all future customers to be served by Aqua Ohio, Inc., living in the Woods of Auburn Lakes Condominium Association, the Auburn Lakes Condominium Association, and the Auburn Crossing Condominium Association will be served on a Special Contract pursuant to the terms of a contracts between the Condominium Associations and Aqua as approved by the Commission.

2. The terms of the Agreement in Case No. 07-\_\_\_\_-WW-AEC with the Woods of Auburn Lakes Condominium Association shall continue in force and effect until the lesser of: 1) a period of six years from the date of execution of this Agreement by the parties; or 2) upon application by Aqua to the Public Utilities Commission of Ohio (PUCO) for Commission approved rates established in accordance with the rules and policies of the PUCO which may be more or less than the rates set forth herein and PUCO approval of such rates. Upon approval of rates by the PUCO and the filing of Commission approved tariff rates applicable to the Association, this Agreement shall terminate. It shall be within Aqua's sole discretion as to when to make such application for approved rates to the PUCO.

3. The terms of the Agreement in Case No. 07-\_\_\_\_-WW-AEC with the Auburn Lakes Condominium Association shall continue in force and effect until the lesser of: 1) a period of six years from the date of execution of this Agreement by the parties; or 2) upon application by Aqua to the Public Utilities Commission of Ohio (PUCO) for Commission approved rates established in accordance with the rules and policies of the PUCO which may be more or less than the rates set forth herein and PUCO approval of such rates. Upon approval of rates by the PUCO and the filing of Commission approved tariff rates applicable to the Association, this Agreement shall terminate. It shall be within Aqua's sole discretion as to when to make such application for approved rates to the PUCO.

4. The terms of the Agreement in Case No. 07-\_\_\_\_-WW-AEC with Auburn Crossing Condominium Association shall continue in force and effect until the lesser of: 1) a period of six years from the date of execution of this Agreement by the parties; or 2) upon application by Aqua to the Public Utilities Commission of Ohio (PUCO) for Commission approved rates established in accordance with the rules and policies of the PUCO which may be more or less than the rates set forth herein and PUCO approval of such rates. Upon approval of rates by the PUCO and the filing of Commission approved tariff rates applicable to the Association, this Agreement shall terminate. It shall be within Aqua's sole discretion as to when to make such application for approved rates to the PUCO.

Issued: \_\_\_\_\_ Effective: \_\_\_\_\_

Issued by Walter J. Pishkur, President, Consumers Ohio Water Company  
In accordance with the Public Utilities Commission of Ohio  
Order Dated \_\_\_\_\_ for Case No. 06-\_\_\_\_-WW-AEC

## **AGREEMENT**

This Agreement is made by and among **Aqua Ohio, Inc.** an Ohio corporation ("Aqua"), and **The Woods at Auburn Lakes Condominium Association, Inc.**, an Ohio non-profit corporation ("Association") and **Auburn Lakes Limited Partnership**, an Ohio limited partnership ("Partnership").

### **RECITALS**

A. The Partnership Entered a Water Supply Agreement with the Association on or about November 12, 2002.

B. The Partnership has continued thereafter to provide a supply of water and water service to the Association and unit owners and occupants in Auburn Lakes Condominiums.

C. The Partnership is entering an Agreement for the sale of the Partnership's water system assets to Aqua; under the aforementioned November 12, 2002, Water Supply Agreement, a sale of the Water System to a company regulated by the PUCO is contemplated. Aqua is an Ohio public utility company so regulated.

D. The parties hereto desire to enter into this Agreement to address said sale of the Partnership's Water System assets to Aqua, along with the involvement of the Association.

NOW, THEREFORE, the Parties hereto hereby further agree as follows:

1. **Acknowledgement of Sale of Water System Assets.** The Association hereby acknowledges the sale of Water System assets from the Partnership to Aqua, in a manner contemplated under the Agreement between the Association and the Partnership entered on or about November 12, 2002. The Association acknowledges that upon such sale, said Agreement shall be terminated in accordance with paragraph 6 thereof.

2. **Waiver of Notice.** The Association hereby waives the one hundred twenty (120) day notice provision set forth in paragraph 6 of said Agreement between the Association and the Partnership.

**3. Continued Water Service.** The Association acknowledges and agrees that upon sale and transfer of the Water System assets from the Partnership to Aqua, water service will be provided to the Association, unit owners and occupants by Aqua, subject to and in accordance with rules and regulations approved by the Public Utilities Commission of Ohio for Aqua's Lake Shore Division. Rates for water delivered by Aqua to the Association shall as of the date of said sale be \$39.99 per month per unit during the term of this Agreement which term shall be the lesser of: 1) a period of six years from the date of execution of this Agreement by the parties; or 2) upon application by Aqua to the Public Utilities Commission of Ohio (PUCO) for Commission approved rates established in accordance with the rules and policies of the PUCO which may be more or less than the rates set forth herein and PUCO approval of such rates. Upon approval of rates by the PUCO and the filing of Commission approved tariff rates applicable to the Association, Paragraph 3 of this Agreement shall terminate. All other terms and conditions of this Agreement shall remain in effect until terminated pursuant to Paragraph 6. It shall be within Aqua's sole discretion as to when to make such application for approved rates to the PUCO.

**4. Association Water Facilities.** Aqua shall be responsible for the maintenance, repairs and replacement to water mains and pipes, main shut-off valves, and related facilities located within the common elements of the Association properties, but not including water lines or service lines and related improvements extending from streets or connections that extend directly into the units located in the Association. The Association grants Aqua the right, privilege and license of access to all water lines, mains, pipes and other facilities located in said common elements. In the event that a replacement of any such facility located within the Association's common elements becomes necessary, or an addition to such facilities becomes necessary in the discretion of Aqua, any such replacement or improvement will be constructed and installed at Aqua's cost, and shall be owned by Aqua. In such event, the Association hereby grants and conveys to Aqua an easement over the Association's common elements for access to the location of such property to install, maintain, repair and replace such property.

**5. First Right of Purchase.** If at any time Aqua receives a bona fide offer for the purchase of the Water System Assets which Aqua chooses to accept, Aqua shall give Auburn Lakes Condominium Association, Inc., the Woods at Auburn Lakes Condominium Association, Inc., and Auburn Crossings Condominium Unit Owners' Association, Inc. (the three entities collectively herein called "The Three Associations.") written notice of such offer. Such notice shall be sent to the addresses of the statutory agents for The Three Associations on file with the Ohio Secretary of State. The Three Associations shall have, for a period of thirty (30) days from the receipt of such notice, the first right to enter into a contract for the purchase of the Water System Assets on terms equal to the terms of the original offer received by Aqua. All three entities of The Three Associations must be included as purchasers in such contract. If such contract is not entered, or if at least a binding offer has not been received by Aqua from The Three Associations to purchase the Water System Assets on the same terms as contained in the original offer within said thirty (30) days, this first right of purchase will be terminated. For purposes of this paragraph, "sale of Water System Assets" shall mean a sale of only those supply, treatment and distribution facilities, and related improvements, used and useful for the immediate supply of water to The Three Associations; this first right of purchase shall not apply to any offer to purchase any regional water system, division, or other form of business owned or operated by Aqua.

6. **Termination.** Should the Association at any time desire to purchase or receive water service from a source other than Aqua, The Association, along with and as one of The Three Associations, shall first purchase from and pay Aqua for all those supply, treatment and distribution facilities, and related improvements, owned by Aqua used and useful for furnishing water to the Association, at a price equal to Aqua's replacement cost new, less observed depreciation for such property. Thereupon, this Agreement shall terminate.

THIS AGREEMENT is effective as of the date it is last signed by the parties hereto.

THE WOODS AT AUBURN LAKES  
CONDOMINIUM ASSOCIATION, INC.

DATE: FEBRUARY 16, 2007

By: Edward M. Ryple  
Its: President

AUBURN LAKES LIMITED PARTNERSHIP

DATE: \_\_\_\_\_

By: Jan K. Fy  
Its: \_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

AQUA OHIO, INC.

DATE: 8/25/07

By: Walter J. Piskur  
WALTER J. PISKUR

Its: President

## **AGREEMENT**

This Agreement is made by and among Aqua Ohio, Inc. an Ohio corporation ("Aqua"), and Auburn Crossings Condominium Unit Owners' Association, Inc., an Ohio non-profit corporation ("Association") and Auburn Lakes Limited Partnership, an Ohio limited partnership ("Partnership").

### **RECITALS**

A. The Partnership Entered a Water Supply Agreement with the Association on or about February 1, 2001.

B. The Partnership has continued thereafter to provide a supply of water and water service to the Association and unit owners and occupants in Auburn Lakes Condominiums.

C. The Partnership is entering an Agreement for the sale of the Partnership's water system assets to Aqua; under the aforementioned February 1, 2001, Water Supply Agreement, a sale of the Water System to a company regulated by the PUCO is contemplated. Aqua is an Ohio public utility company so regulated.

D. The parties hereto desire to enter into this Agreement to address said sale of the Partnership's Water System assets to Aqua, along with the involvement of the Association.

NOW, THEREFORE, the Parties hereto hereby further agree as follows:

1. **Acknowledgement of Sale of Water System Assets.** The Association hereby acknowledges the sale of Water System assets from the Partnership to Aqua, in a manner contemplated under the Agreement between the Association and the Partnership entered on or about February 1, 2001. The Association acknowledges that upon such sale, said Agreement shall be terminated in accordance with paragraph 6 thereof.

2. **Waiver of Notice.** The Association hereby waives the one hundred twenty (120) day notice provision set forth in paragraph 6 of said Agreement between the Association and the Partnership.



**3. Continued Water Service.** The Association acknowledges and agrees that upon sale and transfer of the Water System assets from the Partnership to Aqua, water service will be provided to the Association, unit owners and occupants by Aqua, subject to and in accordance with rules and regulations approved by the Public Utilities Commission of Ohio for Aqua's Lake Shore Division. Rates for water delivered by Aqua to the Association shall as of the date of said sale be \$39.99 per month per unit during the term of this Agreement which term shall be the lesser of: 1) a period of six years from the date of execution of this Agreement by the parties; or 2) upon application by Aqua to the Public Utilities Commission of Ohio (PUCO) for Commission approved rates established in accordance with the rules and policies of the PUCO which may be more or less than the rates set forth herein and PUCO approval of such rates. Upon approval of rates by the PUCO and the filing of Commission approved tariff rates applicable to the Association, Paragraph 3 of this Agreement shall terminate. All other terms and conditions of this Agreement shall remain in effect until terminated pursuant to Paragraph 6. It shall be within Aqua's sole discretion as to when to make such application for approved rates to the PUCO.

**4. Association Water Facilities.** Aqua shall be responsible for the maintenance, repairs and replacement to water mains and pipes, main shut-off valves, and related facilities located within the common elements of the Association properties, but not including water lines or service lines and related improvements extending from streets or connections that extend directly into the units located in the Association. The Association grants Aqua the right, privilege and license of access to all water lines, mains, pipes and other facilities located in said common elements. In the event that a replacement of any such facility located within the Association's common elements becomes necessary, or an addition to such facilities becomes necessary in the discretion of Aqua, any such replacement or improvement will be constructed and installed at Aqua's cost, and shall be owned by Aqua. In such event, the Association hereby grants and conveys to Aqua an easement over the Association's common elements for access to the location of such property to install, maintain, repair and replace such property.

**5. First Right of Purchase.** If at any time Aqua receives a bonafide offer for the purchase of the Water System Assets which Aqua chooses to accept, Aqua shall give Auburn Lakes Condominium Association, Inc., the Woods at Auburn Lakes Condominium Association, Inc., and Auburn Crossings Condominium Unit Owners' Association, Inc. (the three entities collectively herein called "The Three Associations.") written notice of such offer. Such notice shall be sent to the addresses of the statutory agents for The Three Associations on file with the Ohio Secretary of State. The Three Associations shall have, for a period of thirty (30) days from the receipt of such notice, the first right to enter into a contract for the purchase of the Water System Assets on terms equal to the terms of the original offer received by Aqua. All three entities of The Three Associations must be included as purchasers in such contract. If such contract is not entered, or if at least a binding offer has not been received by Aqua from The Three Associations to purchase the Water System Assets on the same terms as contained in the original offer within said thirty (30) days, this first right of purchase will be terminated. For purposes of this paragraph, "sale of Water System Assets" shall mean a sale of only those supply, treatment and distribution facilities, and related improvements, used and useful for the immediate supply of water to The Three Associations; this first right of purchase shall not apply to any offer to purchase any regional water system, division, or other form of business owned or operated by Aqua.

**6. Termination.** Should the Association at any time desire to purchase or receive water service from a source other than Aqua, The Association, along with and as one of The

Three Associations, shall first purchase from and pay Aqua for all those supply, treatment and distribution facilities, and related improvements, owned by Aqua used and useful for furnishing water to the Association, at a price equal to Aqua's replacement cost new, less observed depreciation for such property. Thereupon, this Agreement shall terminate.

THIS AGREEMENT is effective as of the date it is last signed by the parties hereto.

AUBURN CROSSINGS CONDOMINIUM UNIT  
OWNERS' ASSOCIATION, INC.

DATE: 2/8/07

By: Jason M. Watson  
Its: BOARD PRESIDENT

AUBURN LAKES LIMITED PARTNERSHIP

DATE: \_\_\_\_\_

By: Sam K. Seif  
Its: \_\_\_\_\_

AQUA OHIO, INC.

DATE: 5/25/07

By: Walter J. Pishkur  
WALTER J. PISHKUR

Its: President

## AGREEMENT

This Agreement is made by and among Aqua Ohio, Inc. an Ohio corporation ("Aqua"), and the Auburn Lakes Condominium Association, Inc., an Ohio non-profit corporation ("Association") and Auburn Lakes Limited Partnership, an Ohio limited partnership ("Partnership").

### RECITALS

A. The Partnership Entered a Water Supply Agreement with the Association on or about March 25, 1996.

B. The Partnership has continued thereafter to provide a supply of water and water service to the Association and unit owners and occupants in Auburn Lakes Condominiums.

C. The Partnership is entering an Agreement for the sale of the Partnership's water system assets to Aqua; under the aforementioned March 25, 1996, Water Supply Agreement, a sale of the Water System to a company regulated by the PUCO is contemplated. Aqua is an Ohio public utility company so regulated.

D. The parties hereto desire to enter into this Agreement to address said sale of the Partnership's Water System assets to Aqua, along with the involvement of the Association.

NOW, THEREFORE, the Parties hereto hereby further agree as follows:

1. **Acknowledgement of Sale of Water System Assets.** The Association hereby acknowledges the sale of Water System assets from the Partnership to Aqua, in a manner contemplated under the Agreement between the Association and the Partnership entered on or about March 25, 1996. The Association acknowledges that upon such sale, said Agreement shall be terminated in accordance with paragraph 6 thereof.

2. **Waiver of Notice.** The Association hereby waives the one hundred twenty (120) day notice provision set forth in paragraph 6 of said Agreement between the Association and the Partnership.

**3. Continued Water Service.** The Association acknowledges and agrees that upon sale and transfer of the Water System assets from the Partnership to Aqua, water service will be provided to the Association, unit owners and occupants by Aqua, subject to and in accordance with rules and regulations approved by the Public Utilities Commission of Ohio for Aqua's Lake Shore Division. Rates for water delivered by Aqua to the Association shall as of the date of said sale be \$39.99 per month per unit during the term of this Agreement which term shall be the lesser of: 1) a period of six years from the date of execution of this Agreement by the parties; or 2) upon application by Aqua to the Public Utilities Commission of Ohio (PUCO) for Commission approved rates established in accordance with the rules and policies of the PUCO which may be more or less than the rates set forth herein and PUCO approval of such rates. Upon approval of rates by the PUCO and the filing of Commission approved tariff rates applicable to the Association, Paragraph 3 of this Agreement shall terminate. All other terms and conditions of this Agreement shall remain in effect until terminated pursuant to Paragraph 6. It shall be within Aqua's sole discretion as to when to make such application for approved rates to the PUCO.

**4. Association Water Facilities.** Aqua shall be responsible for the maintenance, repairs and replacement to water mains and pipes, main shut-off valves, and related facilities located within the common elements of the Association properties, but not including water lines or service lines and related improvements extending from streets or connections that extend directly into the units located in the Association. The Association grants Aqua the right, privilege and license of access to all water lines, mains, pipes and other facilities located in said common elements. In the event that a replacement of any such facility located within the Association's common elements becomes necessary, or an addition to such facilities becomes necessary in the discretion of Aqua, any such replacement or improvement will be constructed and installed at Aqua's cost, and shall be owned by Aqua. In such event, the Association hereby grants and conveys to Aqua an easement over the Association's common elements for access to the location of such property to install, maintain, repair and replace such property.

**5. First Right of Purchase.** If at any time Aqua receives a bona fide offer for the purchase of the Water System Assets which Aqua chooses to accept, Aqua shall give Auburn Lakes Condominium Association, Inc., the Woods at Auburn Lakes Condominium Association, Inc., and Auburn Crossings Condominium Unit Owners' Association, Inc. (the three entities collectively herein called "The Three Associations.") written notice of such offer. Such notice shall be sent to the addresses of the statutory agents for The Three Associations on file with the Ohio Secretary of State. The Three Associations shall have, for a period of thirty (30) days from the receipt of such notice, the first right to enter into a contract for the purchase of the Water System Assets on terms equal to the terms of the original offer received by Aqua. All three entities of The Three Associations must be included as purchasers in such contract. If such contract is not entered, or if at least a binding offer has not been received by Aqua from The Three Associations to purchase the Water System Assets on the same terms as contained in the original offer within said thirty (30) days, this first right of purchase will be terminated. For purposes of this paragraph, "sale of Water System Assets" shall mean a sale of only those supply, treatment and distribution facilities, and related improvements, used and useful for the immediate supply of water to The Three Associations; this first right of purchase shall not apply to any offer to purchase any regional water system, division, or other form of business owned or operated by Aqua.

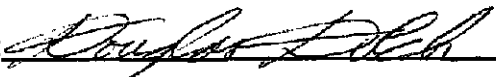
**6. Termination.** Should the Association at any time desire to purchase or receive water service from a source other than Aqua, The Association, along with and as one of The

Three Associations, shall first purchase from and pay Aqua for all those supply, treatment and distribution facilities, and related improvements, owned by Aqua used and useful for furnishing water to the Association, at a price equal to Aqua's replacement cost new, less observed depreciation for such property. Thereupon, this Agreement shall terminate.

THIS AGREEMENT is effective as of the date it is last signed by the parties hereto.

AUBURN LAKES CONDOMINIUM  
ASSOCIATION, INC.

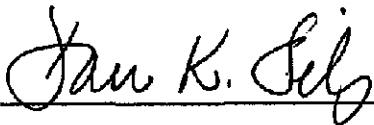
DATE: 02-19-07

By: 

Its: President

AUBURN LAKES LIMITED PARTNERSHIP

DATE: \_\_\_\_\_

By: 

Its: \_\_\_\_\_

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

Its: \_\_\_\_\_

AQUA OHIO, INC.

DATE: 5/25/07

By: 

WALTER J. PISHKUR

Its: President

## LEGAL NOTICE

Notice is given that Aqua Ohio, Inc. (Aqua), [insert address], has filed an application with the Public Utilities Commission of Ohio (Case Nos. 07-\_\_WW-AAC, 07-\_\_WW-AEC, 07-\_\_WW-AEC, and 07-\_\_WW-AEC) requesting authority to amend its certificate of public convenience and necessity to include additional territory in Geauga County, Ohio. According to the application, Aqua seeks authority to provide service to the Woods at Auburn Lakes Condominium Association, the Auburn Lakes Condominium Association, and the Auburn Crossing Condominium Association pursuant to special contracts with the respective condominium owners' associations.

If the Commission grants the application, pursuant to an agreement between Aqua and each respective condominium owners' association, the customers residing in each condominium development in the proposed service area will be charged the a rate set forth in the agreement. That rate will be \$39.99 per month per unit. That rate shall continue in force and effect until the lesser of: 1) a period of six years from the date of execution of the agreement; or 2) upon application by Aqua to the Public Utilities Commission of Ohio (PUCO) for PUCO approved rates established in accordance with the rules and policies of the PUCO, which rates may be more or less than the rate set forth herein. It shall be within Aqua's sole discretion as to when to make such application for PUCO approved rates. The rules, regulations and other miscellaneous charges contained in Aqua Lake Erie Division Tariff No. 1, on file with the Commission will also apply.

Any interested person, firm, corporation, or entity that can show good cause why this application should not be granted should file with the Commission a written statement detailing the reasons, on or before \_\_\_\_\_. Further information may be obtained by contacting the Public Utilities Commission of Ohio, at 180 East Broad Street, Columbus, Ohio 43215, at the PUCO website at <http://www.puc.state.oh.us>, or on the Commission's hotline at 1-800-686-7826.

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application	:	
Of Aqua Ohio, Inc. To Amend	:	
Aqua Ohio, Inc.'s	:	
Certificate of Public Necessity to Expand	:	Case No. 07-____-WW-AAC
The Territory to Which Aqua Ohio	:	
Provides Water Service	:	

In the Matter to Approve Special Contracts	:	
To Serve The Woods at Auburn Lakes Condo	:	Case No. 07-____-WW-AEC
Association, the Auburn Lakes Condo	:	
Association, and the Auburn Crossing Condo	:	
Unit Owners' Association	:	

**AFFIDAVIT OF WALTER J. PISHKUR**  
**IN SUPPORT OF APPLICATION OF AQUA OHIO, INC., FOR APPROVAL TO**  
**AMEND THE CERTIFICATE OF PUBLIC NECESSITY TO EXPAND THE**  
**TERRITORY TO WHICH AQUA OHIO PROVIDES WATER SERVICE**  
**AND**  
**APPLICATION OF AQUA OHIO, INC. FOR APPROVAL OF SPECIAL CONTRACTS**  
**TO SERVE THE WOODS AT AUBURN LAKES CONDOMINIUM ASSOCIATION,**  
**THE AUBURN LAKES CONDOMINIUM ASSOCIATION, AND THE AUBURN**  
**CROSSING UNIT OWNERS' ASSOCIATION**

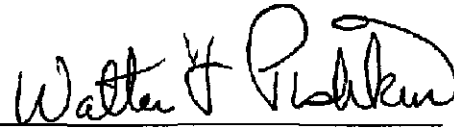
STATE OF OHIO  
COUNTY OF MAHONING: SS

I, Walter J. Pishkur, being first duly cautioned and sworn, state as follows:

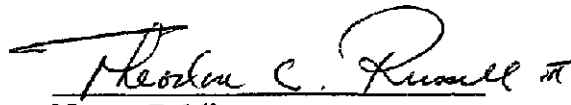
1. I am currently the President of Aqua Ohio, Inc., ("Aqua Ohio"). I have personal knowledge of the Lake Erie Division, its certificate of public necessity, its tariff, and of the matters hereinafter referred to. I make this affidavit in support of Aqua Ohio, Inc.'s application to amend the Certificate of Public Necessity for the Lake Erie Division to expand the service territory of the Lake Erie Division.
2. I have reviewed Aqua Ohio, Inc.'s Application to Amend the Certificate of Public Necessity for the Lake Erie Division to expand the service territory of the Lake Erie Division filed with the Public Utilities Commission in the above-referenced docket.

3. I hereby attest and adopt all the filings submitted with Aqua Ohio Inc.'s Application to Amend the Certificate of Public Necessity for the Lake Erie Division to expand the service territory of the Lake Erie Division.

FURTHER AFFLIANT SAITH NAUGHT.

  
Walter J. Pishkur

Sworn to before me and subscribed to in my presence on this 25<sup>th</sup> day of May, 2007.

  
Notary Public

THEODORE C. RUSSELL II, Notary Public  
State of Ohio  
My Commission Expires July 7, 2008