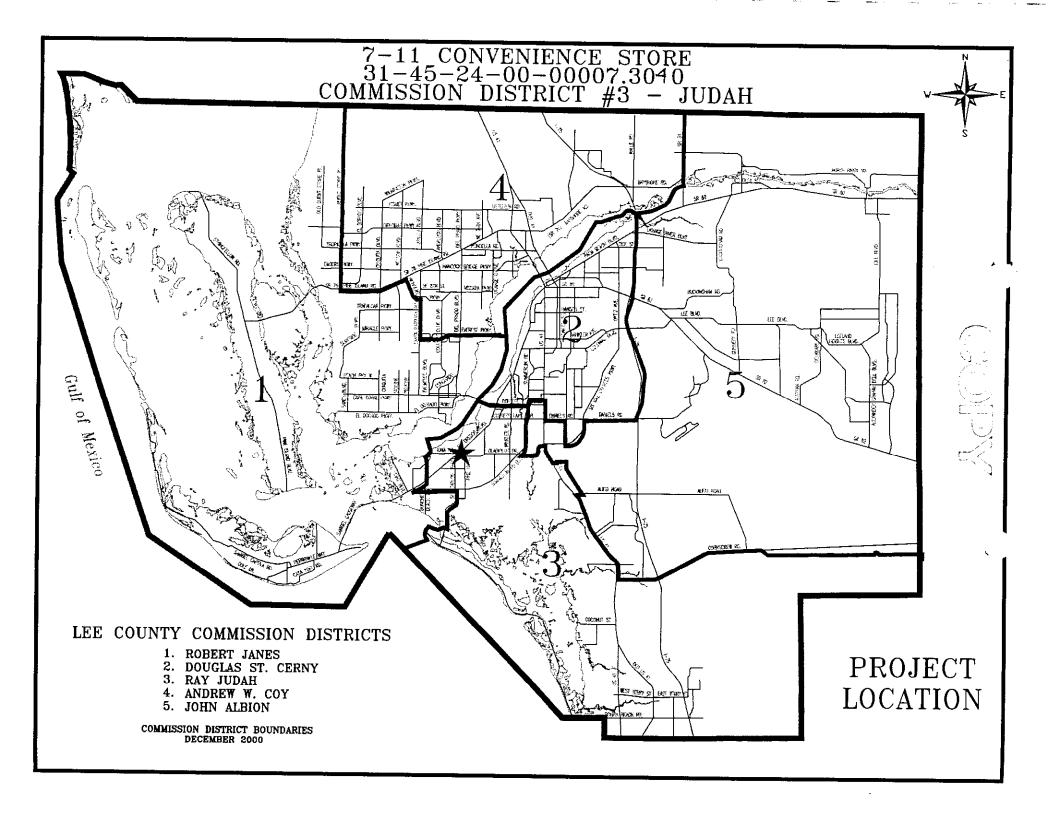
LEE COUNTY BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

BLUE SHEET NO: 20030168-UTL

		•								
1. REQUESTED MOTION: ACTION REQUESTED: Approve construction of one 1-1/2"diameter effluent reuse meter station and recording of an "Agreement for the Delivery and Use of Reclaimed Effluent Water" between Lee County and McGregor-Pine Ridge, LLC for a project known as 7-Eleven Convenience Store #33193. This is a Developer Contributed Asset and the project is located on the southwest corner of Pine Ridge Road and McGregor Boulevard.										
	N IS NECESSAR uent reuse serv		gation of open	green space	e for the prop	osed Con	venience	Store.		
WHAT ACTIO	ON ACCOMPLIS th the Lee Cour	<u>HES:</u> ity utilit <u>ie</u> s O _l	perations Manu	ial and prov	vides an adeq	uate sour	ce of irrig	gation.		
2. DEPARTMI COMMISSI	ENTAL CATEGO ION DISTRICT #	ORY: 10 - UTH	LITIES C/	OA	3. MEET	ING DATI		-11-0	2003	
4. AGENDA:	-	5. REQUIRE	MENT/PURPOSI	Ξ:	6. REQUESTOR OF INFORMATION:					
X CONSENT ADMINISTRATIVE STATUTE APPEALS PUBLIC WALK ON TIME REQUIRED: STATUTE ORDINANCE ADMIN. CODE X OTHER Approval to Construct; Record Agreement				_ [A. COMMISSIONER: B. DEPARTMENT: C. DIVISION/SECTION: Utilities Division BY: Rick Diaz, Utilities Director DATE: 2(13(0))					
7. BACKGRO	UND:	- 1 .				<u>U</u>	,			
Review fee had The plans have The project is Project locating Potable water right-of-way Funds are available SECTION	ve been reviewed to construct 6 on Mapcopy rand sanitary so of McGregor Bailable for reconstruction.	ed for conforn 5' of 2" diame attached. ewer service i oulevard. ding fees in a	eter irrigation p s provided by l ccount number	ressure ma Lee County · OD536074	in and one-m Utilities via	eter station existing 0.	on. infrastruc	eture locat		
			9. RECOMM	ENDED AP	PROVAL					
(A) DEPARTMENT DIRECTOR	(B) PURCH. OR CONTRACTS	(C) HUMAN RESOURCES	(D) OTHER	(E) COUNTY ATTORNE		BUD	TOES		(G) COUNTY MANAGER	
Humin Davender Date: 7-14-13	N/A Date:	N/A Date:	T. Osterhout Date: 2-13	D. Owen	0A 03 P.M 2/18/03	OM (11863)	Risk Wireles	EC PS AND 21 AND	Haundy Date: Fi4 i3	
10. COMMISS	ION ACTION:							··		
	APPROVED Denied Deferred OTHER APPROVED Rec. by CoAtty COUNTY ADMIN. COUNTY ADMIN. FORWARDED TO:									
· · · · · · · · · · · · · · · · · · ·					Forwarded To	: , , , , ,		3/18	AND	



AGREEMENT FOR THE DELIVERY AND USE OF RECLAIMED EFFLUENT WATER

		, * · ·
THIS AGREEMENT is made and entered into on this		
between <u>McGregor & Pine Ridge</u> , <u>LLC</u> and its assigns and successors the "USER," and LEE COUNTY, a political subdivision of the State of Florida, her		
WITNESSETH:		
WHEREAS, the COUNTY owns, maintains, and operates wastewater treatment to produce treated effluent of a quality for the irrigation of grasses, woodlands, are		y and intends
WHEREAS, the COUNTY desires to deliver this treated effluent for irrigation disposal; and	n use by others as a mea	ns of effluent
WHEREAS, the COUNTY intends to utilize a reclaimed effluent distribution made under pressure directly to USER in a closed system; and	ı system in order that de	livery can be
WHEREAS, USER now owns or otherwise controls the land upon which the for irrigation purposes; and	reclaimed effluent water	is to be used
WHEREAS, the COUNTY BELIEVES THAT IT IS IN THE BEST PUBLIC Agreement in order to further dispose of effluent water from its wastewater treatment.		NTO THIS
NOW, THEREFORE, in consideration of the foregoing and the mutual conventional country do hereby agree as follows:	ants contained herein, the	: USER AND
1. <u>EASEMENTS</u>		
(a) If the Point of Delivery is within the USER'S property, the USER w for operation and maintenance of the delivery system for the reclaimed effluent easement agreement itself, and the legal description of the property subject to the easttached hereto as Exhibit A, and made a part of this Agreement.	water on the USER'S pr	roperty. The
(b) Upon execution by both parties of Exhibit A, it shall be recorded official records of Lee County, Florida.	in the appropriate record	d book in the
2. TERMS OF THE AGREEMENT		
The COUNTY shall deliver and the USER shall accept and use reclaimed effl from one of its wastewater treatment facilities, and this Agreement shall be effective a term of twenty (20) years from, 2003, The term of this Agreement year to year beyond the initial twenty-year term, unless terminated by the USER by year (365 days) in advance or by the COUNTY by written notice not less than one anniversary of the commencement of each renewal.	ve on the date of the execute nt shall be renewed autom y written notice not less	cution and for matically from than one (1)

3. <u>USE OF RECLAIMED WATER: USER'S IRRIGATION SYSTEM</u>

- (a) The USER shall use reclaimed water delivered by the COUNTY for agricultural or urban irrigation; to include, but not be limited to, golf courses, lawns, and roadway right-of-way, or other purposes in any manner determined by the USER, except that use of the reclaimed water shall be consistent with all local, state, and federal regulations, and in such a manner as not to require a federal wastewater discharge permit.
- (b) The USER agrees to receive reclaimed water within thirty (30) days of receipt of written notice from the COUNTY that deliveries will commence. The USER shall be solely responsible for the operation and maintenance of all portions of the USER'S irrigation system located within the boundaries of USER'S property and in accordance with the conditions established in Exhibit B of this Agreement.

4. WATER QUALITY

Reclaimed water delivered under this Agreement shall be treated to levels acceptable to meet the requirements of Chapter 17-6 Florida Administrative Code and D.E.R. requirements for irrigation on lands for public access.

5. VOLUME OF WATER: DELIVERY SCHEDULE

The COUNTY will deliver reclaimed water and the USER shall accept and use a volume of gallons of reclaimed water per day in accordance with the conditions established in Exhibit B. The COUNTY will require the USER to install appropriate meters at the Point of Delivery so that the volume of reclaimed water delivered will be monitored.

6. POINT(S) OF DELIVERY

The Point(s) of Delivery of reclaimed water from the COUNTY to the USER is immediately downstream of the meter. The COUNTY shall own, operate, and maintain the reclaimed water distribution system upstream of the Point(s) of Delivery. The USER shall own, operate, and maintain all works downstream of the Point(s) of Delivery.

The USER shall provide, in a manner approved by the appropriate regulatory agencies, a positive check-valve between the reclaimed water irrigation system and any other irrigation water source(s). The cost of such check-valve and its installation shall be borne by the USER, and the complete operation of the check-valve shall be the responsibility of the USER. The USER agrees to identify to the COUNTY all well(s) connected to the irrigation system. The USER may continue to use its existing well(s) and/or lake or pond water source(s) for its irrigation system, provided that the two are not operated simultaneously.

It shall be the USER'S responsibility to construct all lines, meters, etc., necessary to extend reclaimed water lines from existing COUNTY facilities. Construction shall be in accordance with COUNTY Standards. Record drawings shall be submitted to the COUNTY, as well as a Certificate of Contributory Assets, covering all facilities on the upstream side of, and including, the meter. A Release of Lien and a One-Year Warranty shall be furnished prior to the Utilities Department forwarding the project to the Board of County Commissioners for final acceptance of the portion of the line upstream of the meter.

7. DELIVERY OF RECLAIMED WATER UNDER ADVERSE CONDITIONS

(a) Adverse weather conditions or unforeseen circumstances may necessitate modification of the normal delivery schedule. Their USER may have the right to restrict the use of the reclaimed water to be delivered in the event of adverse weather conditions or unforeseen circumstances. The USER shall not restrict the use of reclaimed water until all alternate application sites available to the USER have been utilized to their capacity. Notice to the COUNTY of the USER'S intent to restrict the use of the reclaimed water shall be in writing and accepted by the COUNTY in advance. If

advance notice to the COUNTY is not practical, then the USER shall give oral notice of the restriction to the COUNTY immediately, to be followed by a written document as soon as it is practical, fully describing the circumstances for the restriction.

- (b) Both parties also recognize that adverse weather conditions or unforeseen circumstances may result in a need for reclaimed water greater than the volume set forth in Paragraph 5. Each USER shall have the right to draw additional water, subject to availability of reclaimed water supplies. During any period in which more than one USER exercises the right to draw additional reclaimed water, the COUNTY will furnish water, if available, as the transmission and delivery systems are capable of handling.
- (c) If the COUNTY'S transmission or distribution system fails for reasons or events beyond the COUNTY'S control, then delivery of reclaimed water under the requirements of this Agreement may be interrupted or limited in quantity.

8. <u>EMERGENCY SITUATIONS</u>

The COUNTY shall not be held liable by the USER for failure to deliver reclaimed water if an emergency situation preventing such delivery exists.

If and when emergency situations occur, the COUNTY will notify the USER by telephone and follow up with a letter stating the nature of the emergency and the anticipated duration.

9. TERMINATION OR ASSIGNMENT

- (a) The USER may have the right to terminate its obligations under this Agreement only upon two (2) years advance written notice to the COUNTY. The USER shall be liable for all costs and expenses that the COUNTY may incur for developing any alternate method of disposal of the effluent not taken as the result of the USER'S termination, unless such termination is mandated by a State or Federal regulatory agency.
- (b) The COUNTY shall have the express right to collect from USER, all costs expended by the COUNTY that are associated with any alternate method of disposal of the effluent not taken as the result of the USER'S termination, subject to the condition in Part 9(a) above.
- (c) The COUNTY shall have the right to terminate this Agreement if performance is prevented by third-party litigation or any other event beyond the control of the COUNTY.
- (d) The COUNTY shall have the right to transfer all or any part of the treatment or distribution facilities to others and to assign all or any part of its rights and obligations under this Agreement to others who shall be bound by and accept, and be exclusively responsible for all applicable terms and conditions of this Agreement.

10. EXCUSE FROM PERFORMANCE BY GOVERNMENTAL ACTS

If for any reason during the term of this Agreement, Local, State or Federal governments or agencies shall fail to issue necessary permits, grant necessary approvals, or shall require any change in the operation of the treatment, transmission and distribution systems or the application and use of reclaimed water, then to the extent that such requirements shall affect the ability of any party to perform any of the terms of this Agreement, the affected party shall be excused from the performance thereof and a new Agreement shall be negotiated by the parties hereto in conformity with such permits, approvals, or requirements.

11. TRANSFER OR MODIFICATION OF USER'S COMMITMENT

Sale of Land: The USER'S right to sell, transfer or encumber the land described in Exhibit A shall not be restricted by this Agreement, except that immediate written notice of any proposed sale or transfer must be given to the COUNTY at the address noted in Section 20 herein, and any subsequent party in interest shall be obligated to receive and use the allocation of reclaimed water described in Paragraph 5 and the buyer or transferee must execute and deliver to the COUNTY prior to the sale or transfer, an acknowledgement and acceptance of the prior USER'S commitment under the same terms and conditions of this Agreement. In effect, this Agreement shall run with the land, and as such, shall be properly filed with the Property Records of Lee County, Florida.

12. INDEMNIFICATION

- (a) The COUNTY shall indemnify and hold harmless the USER, including its officers, directors, members, employees and agents, against any and all claims, actions, suits, proceedings, costs, expenses, damages or liabilities arising out of any injury, illness, or disease to persons or property alleged to have been caused directly or indirectly, in whole or in part, by the reclaimed water furnished by the COUNTY at Florida Department of Environmental Regulations (DER) Standards, to the USER hereunder.
- (b) The obligation of the COUNTY to indemnify the USER shall be conditioned upon the compliance of the USER with all regulatory agency requirements and regulations for the use of the reclaimed water from the point of the USER'S control, provided that the noncompliance with the said regulations by the USER is the primary or proximate cause of the alleged injury, illness or disease to persons or to property.
- (c) The USER shall save and hold harmless and indemnify COUNTY, its agents, representatives, servants and employees, insofar as it legally may from all claims costs, penalties, damages and expenses (including attorney's fees) arising out of the following:
 - 1. Claims related to the USER'S construction, erection, location, operation, maintenance, repair, installation, replacement or removal of that part of the system controlled by the USER for efficient disposal and reuse;
 - 2. Claims arising out of USER'S negligence or omissions upon any areas controlled by COUNTY that are contained within, adjoining or abutting USER'S property, or claims arising out of USER'S negligence or omissions within an area controlled, operated, or maintained by USER;
 - 3. Claims or demands that the use of the reclaimed irrigation water by the USER in the manner set forth in this Agreement constitutes a nuisance, or is in violation of Statutes or regulations, within or upon any areas controlled, operated, or maintained by USER.

USER'S indemnification of the COUNTY in the above listed claims are subject to the terms and conditions contained in Paragraphs 7 and 8 of this Agreement.

13. RIGHT TO SET RATES, FEES AND CHARGES

Nothing in this Agreement shall be construed as affecting in any way COUNTY'S right and obligation to set fees, rates and charges, and its authority to regulate the delivery, storage, use, or spraying of effluent. COUNTY specifically, and without limitation, reserves the right to set rates, fees and charges for the provision of treated effluent in accordance with the authority vested in COUNTY and in accordance with the rules, regulations, and procedures prescribed for COUNTY under the Laws of Florida.

14. CHARGES AND RELATED CONSIDERATIONS

For furnishing of the reclaimed water, the COUNTY'S current charge is \$0.21 per 1,000 gallons. The COUNTY shall bill the USER monthly on the number of gallons committed to by this Agreement or the actual use, which ever is greater. Payment shall be made to the COUNTY within 30 days following receipt of the bill.

15. ACCESS

The COUNTY shall have the right, at any reasonable time and upon written notice to the USER in advance, to enter upon the property of the USER to review and inspect the practices of the USER with respect to conditions agreed to herein, to include compliance with any and all Local, State and Federal regulatory agencies.

Such entry shall normally be for the purpose of review of the operation of reclaimed water irrigation system, for inspection of COUNTY-owned mains and appurtenances, and for sampling at any monitoring wells located on the property of the USER. The USER has the option of having a representative accompany the COUNTY personnel. All such on-site monitoring will be at COUNTY'S expense.

16. DISCLAIMER OF THIRD PARTY BENEFICIARIES

This Agreement is solely for the benefit of the formal parties hereto and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party not a formal party hereto.

17. SEVERABILITY

If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the parties contained therein are not materially prejudiced and if the intentions of the parties can continue to be effected. To that end, this Agreement is declared to be severable.

18. LAND USE APPROVALS

This Agreement shall not be construed as a basis for (1) granting or assuring or indicating or (2) denying, refusing to grant or preventing any future grant of land use or zoning approvals, permissions, variances, special exceptions, or rights with respect to the real property in the irrigated area.

19. APPLICABLE LAW

This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida.

20. NOTICES

All notices required or authorized under this Agreement shall be given in writing and shall be served by mail on the parties at the addresses below:

COUNTY:	LEE COUNTY UTILITIES Post Office Box 398 Fort Myers, FL 33902-0398				
USER:	Greg Nowak, Class "A" Member				
	McGregor & Pine Ridge, LLC				
	c/o Belleair Development Group, Inc.				
	6654 78th Avenue North				
	Pinellas Park, FL 33781				

LCDUMan - July 1, 1996 - Sect 11

21. WAIVER OF RIGHTS AFFORDED BY THE UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACOUISITION POLICIES ACT OF 1970

The USER acknowledges having been informed of his rights under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. The USER also acknowledges receipt of a copy of EPA Regulations and Implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and hereby voluntarily waives these rights.

22. EXHIBITS AND ADDENDUMS

Exhibit A: Delivery and Use of Reclaimed Water Easement

Exhibit B: Contract Conditions between LEE COUNTY and _____

This Agreement	incorporates the	following	exhibits and	l addendums	which	are	specifically	made	a	part	of	this
Agreement:												

McGregor & Pine Ridge, LLC

IN WITNESS WHEREOF, this Agreement, with its attached Exhibits and Addendums, constitutes the entire Agreement between the parties and has been entered into voluntarily and with independent advice and legal counsel, and has been executed by the authorized representative of each party on the date written herein. Modifications to and waivers of the provisions herein shall be made in writing by the parties hereto.
SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:
WITNESS: Owner/Corporation McGregor & Pine Ridge, LLC
By: Greg Nowak Ist Witness
Class "A" Member 2nd/Witness Title
STATE OF FLORIDA) SS:
COUNTY OF PINELLAS) JANUARY
The foregoing instrument was signed and acknowledged before me thisday of, 2003 by
Greg Nowak who has produced Kooppo O.E.
as identification, and who (did) (did not) take an oath.
Elizaboth a Reuson
Notary Public Signature
Printed Name of Notary Public MY COMMISSION # CC888316 EXPIRES: Nov. 15, 2003 1-800-3-NOTARY FL Notary Service & Bonding, Inc.
Notary Commission Number (NOTARY SEAL) Approved As To Form:

Office of County Attorney

EXHIBIT A

An easement is not required for reclaimed effluent water use as the meter station will be located, in its entirety, in the ROW of McGregor Boulevard.

EXHIBIT A FIGURE A-1

McGregor	& Pine Ridge, LLC
	(Name of Association)

LEGAL DESCRIPTION OF PROPERTY TO BE SERVED:

(INSERT LEGAL DESCRIPTION HERE OF PROPERTY WHICH IS SUBJECT TO IRRIGATION WITH RECLAIMED WATER)

See Attached.



Bean, Whitaker, Lutz & Kareh, Inc.

13041 McGregor Boulevard, Suite 1 Fort Myers, Florida 33919-5910 email – fmoffice@bwlk.net (Ph) 941-481-1331 (Fax) 941-481-1073

Description of a Parcel of Land
Lying in
Sections 30 and 31, Township 45 South, Range 24 East
Lee County, Florida
(Parcel A)

A tract or parcel of land situated in the State of Florida, County of Lee, lying in Sections 30 and 31, Township 45 South, Range 24 East, and further described as follows:

Commencing at the northeast corner of Section 31, Township 45 South, Range 24 East; thence N89°41'24"W along the north line of said Section 31 for 25.00 feet to the westerly right-of-way line of Pine Ridge Road and the <u>Point of Beginning</u>; thence N30°12'10"W along the southeasterly line of a right-of-way taking parcel (denoted as "less and except" in Official Record Book 3028 at Page 2621) for 123.66 feet to the southeasterly right-of-way line of McGregor Boulevard; thence S50°28'00"W along the southeasterly line of said taking parcel and said McGregor Boulevard (55 feet from centerline) for 243.66 feet; thence S39°32'00"E for 335.00 feet; thence N50°28'00"E for 50.28 feet to the westerly right-of-way of said Pine Ridge Road (25 feet from the centerline); thence N00°23'30"W along the westerly line of said Pine Ridge Road for 274.60 feet to the <u>Point of Beginning</u>.

Parcel contains 1.32 Acres (57,675 square feet) more or less.

Bearings are based on the east line of the Northeast One Quarter (NE 1/4) of Section 31, Township 45 South, Range 24 East (the centerline of Pine Ridge Road) as bearing N00°23'30"W.

Subject to easements, restrictions, reservations and rights-of-way (recorded and unrecorded, written and unwritten).

Bean, Whitaker, Lutz & Kareh, Inc. [LB4919]

33053DESC1 02/25/02

Scott C. Whitaker, P.S.M. 4324



PAUL T POKORNY, PE

EXHIBIT B CONTRACT CONDITIONS BETWEEN

AND LEE COUNTY

THE FOLLOWING conditions are agreed to by McGregor & Pine Ridge, LLC , (hereinafter referred to as "USER"), and LEE COUNTY (hereinafter referred to as "COUNTY"), for the use of reclaimed effluent water. Conditions set forth in this Exhibit B are in accordance with the Agreement and are meant to meet the specific needs of the individual USER and the COUNTY.

All conditions of this Exhibit B are specifically added to and made part of this Agreement.

Location of Property and Distribution Points:

The property identified by the USER to receive reclaimed water is described in Exhibit A of the Agreement. The distribution point (or Point of Delivery) to where the County is to deliver the reclaimed water shall be considered a point inside the along McGregor Boulevard shown in Figure A-1.

right-of-way

Quantity of Reclaimed Water:

The COUNTY will deliver and the USER shall accept a monthly average flow of ______0.003 _____ million gallons per day (MGD) reclaimed water. Availability of the reclaimed water shall be determined by the COUNTY based upon: flow into the treatment facility, quality of the reclaimed water, and/or priority level as established in the Agreement. The maximum rate available to the USER, under these adverse conditions, will be twice the average daily flow rate of ____MGD, or ___0.006 ___MGD.

Operation and Maintenance Practices:

The USER will apply reclaimed water in accordance with all appropriate Local, State, and Federal rules and regulations.

Reclaimed water irrigation systems shall protect human health and the environment, which includes, but is not limited to, the following:

- 1. Appropriate warning signs shall be posted around the sites utilizing reclaimed water by the USER to designate the nature of the water and its non-potability.
- 2. The USER will also take all reasonable precautions, including signs and labeling, to clearly identify reclaimed water systems to prevent inadvertent human consumption.
- 3. The USER shall ensure that no inter-connections are made between the reclaimed water system and other water systems, which includes the installation of irrigation check valves on existing wells that are to remain connected to the irrigation system for reclaimed water.
- 4. A distance of 500 feet should be maintained between the periphery of the reclaimed water irrigation system application site and any existing or approved (but not yet constructed) shallow drinking water wells.
- 5. A distance of 1,000 feet shall be maintained between potable water wells and holding ponds which are incorporated into the irrigation system.

6. The USER shall give approval to the COUNTY to conduct soil borings and locate monitoring wells at the perimeter of the property in areas agreeable to the USER so as not to interfere with USER'S operations. These monitoring wells shall be installed and sampled at periodic intervals by the COUNTY at the COUNTY'S expense.

COST ALLOCATION

All costs for operating and maintaining the USER'S irrigation distribution system shall be exclusively paid by the USER.

TO: LEE COUNTY FINANCE DEP UTILITIES ENGINEER FROM:		BS 20030168-UTL			
(Department)					
SUE GULLEDGE					
A. AUTHORIZATION:	MW	_			
This transmittal authorizes the	UTIL. ENGINEERING	_			
office to incur expenses for filing/ Purchase Order #N/A for _	records against:	STORE #33193 (AGRE	EMENT FOR DELIVERY AND D EFFLUENT WATER)		
ACCOUNT NO. OD5360748700.5	04930	(MCGREGOR-PI	NE RIDGE, LLC)		
ORIGINAL EASEMENT TO MINUT WITH COPY TO SUE GULLEDGE,		Jue Gu	Signature Authorization		
		SUE GULLEDGE	Signature Authorization		
B. SERVICE RECEIVED: RECORDING					
O. R. COPIES					
PLAT COPIES					
CASE #/INDEX FEE					
DESCRIPTION OF SERVICE					
•					
AMOUNT OF FEE INCURRED \$ _		er samma u			
(date)		(DEPUTY	CLERK)		
THIS FORM O	GOES TO CASHIER WITH F	(CUSTOMER	• •		
C. INVOICE INFORMATION: (FOR	CLERK'S DEPARTMENT ONL	Υ)			
		•••			
REC'D					
ENTERED					
CUST. #					
INV. #					
PLEASE REMIT TO: Clerk's	Accounting				

P.O. BOX 2396

FORT MYERS, FLORIDA 33902-2396

White - FINANCE Yellow - DEPT FISCAL OFFICER Pink - CLERK'S OFFICE