Passed: 7-1 (RY)

ORDINANCE 99-10

APPROVING AN AGREEMENT FOR THE ACQUISITION OF THE ASSETS OF THE RUSSELL ROAD WATER CORPORATION, AND APPROVING THE ISSUANCE AND DELIVERY OF A PROMISSORY NOTE AS CONSIDERATION FOR SUCH ACQUISITION

WHEREAS, pursuant to Indiana Code Sections 36-9-2-14, 36-9-2-15, and 8-1.5-1-1, et seq., the City of Bloomington, Monroe County, Indiana (the "City") owns, operates, manages and controls a water utility system, known as the City of Bloomington Utilities; and

WHEREAS, pursuant to Indiana Code Section 8-1.5-2-3(b), the City may acquire the assets of a public utility that are located within a six (6) mile radius of the corporate boundaries of the City without the consent of any agency or entity other than this Common Council; and

WHEREAS, the Russell Road Water Corporation ("Seller") has offered to sell to the City its water utility system, which is located and serving customers in an area previously annexed into the City by Ordinance 95-66 and certain adjacent areas (the "Russell Road Assets"), pursuant to the terms of a certain agreement which is attached hereto as Exhibit A and which, including its attachments, is incorporated herein by reference (the "Agreement"); and

WHEREAS, other than the cost to connect the Russell Road Assets to the City's existing water utility system, there should be no other immediate repairs, replacements or additions to the Russell Road Assets needed to make them effective for the purpose of providing water utility service to customers; and

WHEREAS, pursuant to the terms of the Agreement, no lien or other encumbrance will exist on the Russell Road Assets; and

WHEREAS, as consideration for the transfer of the Russell Road Assets to the City, the City will deliver a promissory note to the Seller in the principal amount of $170,000 and in substantially the form as set forth on the attached Exhibit B (the "Promissory Note"); and

WHEREAS, the Promissory Note shall be secured only by the revenues of the City of Bloomington Utilities Department, and shall not constitute a corporate indebtedness of the City within the provisions and limitations of the Constitution of the State of Indiana; and

WHEREAS, customers acquired from the Russell Road Water Corporation will pay the customary rates and charges which are generally applicable to City of Bloomington Utilities water customers and have been approved by the Indiana Utility Regulatory Commission; and

WHEREAS, said customers have been notified of the proposed acquisition by two neighborhood meetings and have expressed general support for the acquisition;

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, THAT:

SECTION 1. The Common Council, after investigation and consideration, finds that the acquisition of the Russell Road Assets is in the public convenience and necessity and will further the public health and welfare of the people of the City.

SECTION 2. The Common Council finds that the Agreement is a just and equitable agreement.

SECTION 3. The Common Council hereby approves the acquisition of the Russell Road Assets, and directs the City of Bloomington Utilities Service Board to execute the Agreement and orders the Utilities Service Board to take all necessary actions to complete the acquisition of the Russell Road Assets pursuant to the terms and conditions of the Agreement.

SECTION 4. The Common Council hereby approves the issuance of the Promissory Note and the delivery of the Promissory Note to the Seller, and directs the City of Bloomington Utilities Service Board to execute the Promissory Note and deliver it to Seller in accordance with the terms of the Agreement.

SECTION 5. The Common Council finds that customers currently served by the Russell Road Assets and customers to be served by such assets in the future should be charged the customary rates and charges which are generally applicable to City of Bloomington Utilities water customers and have been approved by the Indiana Utility Regulatory Commission, unless otherwise determined by this Council in the future.

SECTION 6. The Common Council directs the Clerk of this Council to immediately cause to be published, in accordance with Indiana Code Section 5-3-1-1, et seq., notice of the adoption of this ordinance.

SECTION 7. If any sections, sentence or provision of this ordinance, or the application thereof to any person or circumstances shall be declared invalid, such invalidity shall not affect any of the other sections, sentences, provisions, or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

SECTION 8. This ordinance shall be in full force and effect from and after its passage by the Common Council of the City of Bloomington and approval of the Mayor.

PASSED AND ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this 2nd day of June, 1999.

TIMOTHY MAYER, President
Bloomington Common Council

ATTEST:

PATRICIA WILLIAMS, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this 2nd day of June, 1999.

PATRICIA WILLIAMS, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this 2nd day of June, 1999.

JOHN FERNANDEZ, Mayor
City of Bloomington

SYNOPSIS

This ordinance authorizes and directs the City of Bloomington Utilities Service Board to execute an Agreement and supporting Promissory Note for the acquisition of the assets of the Russell Road Water Corporation. This acquisition will allow the City's Utilities Department to provide water service to city residents that were annexed under Ordinance 95-66. The acquisition will be funded solely by Utilities revenues.

Signed copies to.
legal Dept - Jennifer Lloyd. Controller - 2
Utilities

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the "Agreement"), made as of the date last executed below, by and among **RUSSELL ROAD WATER CORPORATION**, an Indiana Corporation ("Seller"), and the **CITY OF BLOOMINGTON, INDIANA**, by and through its Utility Service Board ("Purchaser").

WHEREAS, Seller owns and operates a water utility in Monroe County, Indiana (the "Utility") ; and

WHEREAS, Purchaser desires to purchase from Seller, and Seller desires to sell to Purchaser, the Assets (as hereinafter defined), free and clear of any and all liabilities and obligations, all upon terms and conditions more particularly set forth herein;

NOW, THEREFORE, for and in consideration of the premises and mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. PURCHASE AND SALE OF ASSETS.

Subject to the terms and conditions hereof, Purchaser agrees to purchase from Seller, and Seller hereby agrees to sell, transfer, assign, convey and deliver to Purchaser, at Closing (as hereinafter defined), all of the assets, rights, properties and business of the Seller, including the following (the "Assets"):

1.1 All water mains, lines, meters, appurtenances and other machinery, and equipment related to the operation of the Utility, including, without limitation, the assets set forth in Schedule 1.1 attached hereto (the "Water System");

1.2 All rights, privileges, interests, easements, hereditaments, appurtenances, licenses, leases, contract rights and other agreements concerning any real property on or in which the Water System is located (the "Real Estate");

1.3 All rights of the Seller to all service, maintenance or other agreements or contracts relating to the ownership or operation of the Water System, including, without limitation, all customer contracts (the "Contracts");

1.4 All rights of the Seller under express or implied warranties or guaranties from suppliers and others with respect to the Water System to the extent transferable, but excluding such rights insofar as the same pertain to Seller's liabilities (the "Warranties");

1.5 All rights of the Seller to all licenses, permits, approvals or qualifications issued by any applicable governmental authority or required by any and all statutes, ordinances, rules or other governmental regulations for the use and operation of the Water System (the "Permits");

1.6 All customer lists and customer service records; and

1.7 All information, product designs, blueprints, drawings, recorded knowledge, specifications, engineering tests and reports, manuals, material standards, process information, research data, and data bases related to the Utility and/or the Water System, including, without limitation, continuing property records, reports submitted to state agencies and maintenance records.

SECTION 2. LIABILITIES.

Notwithstanding anything contained in this Agreement to the contrary, Purchaser shall not assume nor be deemed to have assumed any claims, liabilities, obligations or responsibilities of the Seller of any kind, character and nature, whether matured or unmatured, liquidated or unliquidated, fixed or contingent, or known or unknown, and regardless of when incurred, including, but not limited to, property taxes and regulatory assessments or fees that are assessed for any period prior to, and are unpaid or unsatisfied on, the Closing Date.

SECTION 3. PURCHASE PRICE.

3.1 Purchase Price. The Purchase Price for the Assets shall be One Hundred Seventy Thousand Dollars ($170,000).

3.2 Manner of Payment. The Purchase Price payable at closing shall be paid by delivery of a promissory note of the Purchaser in the principal amount of One Hundred Seventy Thousand Dollars ($170,000), payable to the order of the Seller, in substantially the form set forth in Schedule 3.2 attached hereto (the "Promissory Note").

SECTION 4. REPRESENTATIONS AND WARRANTIES OF

SELLER AND SHAREHOLDERS.

Seller hereby represents and warrants to the Purchaser that:

4.1 Organization, Standing and Corporate Power. Seller is a corporation duly organized and validly existing under the laws of the State of Indiana and has all requisite corporate power and authority to own its properties and to carry on its business as now owned and operated by it, to execute and deliver this Agreement and the other documents hereby contemplated on its part to be executed, and to consummate the transactions contemplated hereby.

4.2 Authority. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action.

4.3 Binding Obligations. This Agreement and each other document hereby contemplated to be executed by the Seller will, upon execution for value, constitute a legal, valid and binding obligation of the Seller, enforceable against Seller in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, moratorium or other similar laws affecting the enforcement of creditors rights generally, or by reason of general equity principles.

4.4 No Violation. Neither the execution of this Agreement nor any other document hereby contemplated to be executed by the Seller, nor the consummation of the transactions contemplated hereby, nor compliance by the Seller with any of the provisions hereof, will: (a) conflict with or violate any provision of the Articles of Incorporation or By-Laws of Seller; (b) result in a default, or give rise to any right of termination, cancellation, or acceleration under any of the terms, conditions or provisions of any agreement or other instrument or obligation to which the Seller is a party, or by which the Seller may be bound; (c) violate any judgment, order, writ, injunction, or decree of any court or governmental authority having jurisdiction over the Seller or it's property; or (d) cause, or give any creditor grounds to cause the maturity of any liability or obligation of the Seller to be accelerated or increased. Except for the consents and approvals set forth in Schedule 4.5 (the "Seller's Required Consents and Approvals"), no consent or approval of any person or entity is required in connection with the execution and delivery by the Seller of this Agreement or the consummation of the transactions contemplated hereby (subject to obtaining any Purchaser's Required Consents and Approvals (as hereinafter defined)), or is necessary to permit Purchaser to continue to conduct the business and operations of the Seller after the Closing Date in a manner consistent with that in which they are presently conducted.

4.5 Title to Assets. Seller has good and marketable title to all of the Assets, free and clear of all liabilities (contingent or otherwise), restrictions, mortgages, pledges, liens, conditional sales agreements, encumbrances, security interests, financing statements, charges, options, agreements or claims and other encumbrances of any kind or nature whatsoever. Seller has the

absolute right to sell, transfer and convey the Assets.

4.6 Easements and Rights-of-Way; Leases. The Water System is located on or in (a) public rights-of-way in which Seller has been duly authorized to install and maintain the Water System, or (b) on or in private property in which Seller has an easement, license, contract or other right to install and maintain the Water System. There are no leases, licenses or rental agreements encumbering or affecting the Real Estate or any portion thereof.

4.7 Condition of Assets. All of the tangible personal property included in the Assets are in good operating condition and repair, ordinary wear and tear excepted, and in a state of maintenance, repair and operating condition required for the proper operation and use thereof in the ordinary and usual course of business by the Seller. Seller knows of no repairs that otherwise need to be made to the Water System and has no knowledge of any latent structural defects or any other defects of the Water System.

4.8 No Litigation. There are no actions, suits, claims, investigations or proceedings pending or threatened against or involving the Seller or the Assets before any court, administrative agency or other body, and no judgment, order, writ, injunction, decree or other similar command of any court or governmental authority is presently in effect or has been entered against or served upon the Seller.

4.9 Compliance with Law. Seller is in compliance with all applicable laws, regulations, codes, ordinances, orders and other requirements of any and all governmental authorities, including, without limitation, applicable laws, regulations, ordinances or requirements relating to the Water System or its operation, the environment, ecology, pollution, health or safety. Seller has all necessary licenses and permits required by any and all statutes, ordinances, rules or other governmental regulations for the use and operation of the Water System.

4.10 No Liens. There will be no recorded or unrecorded liens, security interests or the encumbrances against any part of the Assets which will not be satisfied at or prior to closing.

SECTION 5. REPRESENTATIONS AND WARRANTIES OF PURCHASER.

Purchaser hereby represents and warrants the following:

5.1 Organization and Power. Purchaser is a municipality duly organized and existing under the laws of the State of Indiana and Purchaser has the power, under Indiana law, to purchase the Assets as provided in this Agreement.

5.2 Authority. The execution, delivery and performance of this Agreement and the

consummation of the transaction referred to and contemplated herein have been duly and effectively authorized by the Common Council of the City of Bloomington, Indiana.

5.3 Binding Obligations. This Agreement and each other document hereby contemplated to be executed by the Purchaser will, upon execution for value, constitute a legal, valid and binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, moratorium or other similar laws affecting the enforcement of creditors rights generally, or by reason of general equity principles.

5.4 No Violation. Neither the execution of this Agreement nor any other document hereby contemplated to be executed by the Purchaser, nor the consummation of the transactions contemplated hereby, nor compliance by the Purchaser with any of the provisions hereof, will: (a) result in a default, or give rise to any right of termination, cancellation, or acceleration under any of the terms, conditions or provisions of any agreement or other instrument or obligation to which the Purchaser is a party, or by which the Purchaser may be bound; (b) violate any judgment, order, writ, injunction, or decree of any court or governmental authority having jurisdiction over the Purchaser or its property; or (c) cause, or give any creditor grounds to cause the maturity of any liability or obligation of the Purchaser to be accelerated or increased. Except for the consents and approvals set forth in Schedule 5.4 (the "Purchaser's Required Consents and Approvals"), no consent or approval of any person or entity is required in connection with the execution and delivery by the Purchaser of this Agreement or the consummation of the transactions contemplated hereby (subject to obtaining any Seller's Required Consents and Approvals).

SECTION 6. OBLIGATIONS OF PARTIES PRIOR TO CLOSING.

6.1 Covenants of Seller. Seller hereby covenants and agrees that, from the date of this Agreement to the Closing:

6.1.1 Seller shall maintain its corporate existence and shall use its best efforts to keep its business and organization intact and to preserve for Purchaser the value of the Assets. During the period prior to Closing, Seller shall: (i) conduct its business, operations, activities and practices in a reasonable manner in accordance with its past practices and procedures; (ii) engage only in transactions or other activities which are in the ordinary course of business; (iii) perform all maintenance and repairs necessary to keep all the tangible assets in good operating condition and repair, ordinary wear and tear excepted; and (iv) not sell or otherwise dispose of any Assets.

6.1.2 Seller shall promptly inform Purchaser upon (i) receiving any notice of any existing or alleged violation of or non-conformity with any material law or regulation

relating to Seller, its business, the Assets and/or the use, occupancy or operation thereof, (ii) the breach of any of the representations and warranties of Seller contained in this Agreement or of any of the covenants, terms and conditions to be complied with, fulfilled or performed by Seller under this Agreement; or (iii) violation of or default under any license, permit, certificate, order, authorization, consent, franchise, declaration, designation, filing, registration or other approval which is necessary to comply with any material law or regulation or to operate, use or occupy Seller's business or the Assets.

6.1.3 Seller shall continue all existing policies of insurance in full force and effect through the Closing Date.

6.1.4 Seller shall use its best efforts to obtain the Seller's Required Consents and Approvals and to assist Purchaser in obtaining, as soon as is reasonably practicable, the Purchaser's Required Consents and Approvals.

6.1.5 Seller shall at Seller's sole expense assign to and/or obtain for Purchaser any and all easements, licenses, leases, contracts or other agreements necessary for the use and operation of the Water System for any part of the Water System which is not located in public rights-of-way or dedicated utility easements. Seller shall obtain any consents that may be required for the assignment of Seller's easements, licenses, leases, contracts or other agreements to Purchaser. Within fourteen (14) days after the execution of this Agreement, Seller shall provide to Purchaser evidence and records of all easements, licenses, leases, contracts or other agreements to be assigned to Purchaser, including copies of all such easements, licenses, leases, contracts or other agreements and recording information.

6.1.6 Seller shall not enter into any new undertakings, easements or agreements relating to or encumbering the Water System or the Real Estate.

6.1.7 Seller shall continue to maintain the Water Systemn the same manner that Seller has maintained the Water System during its ownership, which includes maintaining the Water System in such a manner that it complies with all applicable laws, ordinances, rules and regulations which affect the Water System and shall not commit or permit to be committed any waste to the Water System.

6.1.8 Seller shall not enter into any contract, agreement or option granting to any party the right to purchase the Assets (including the Water System or the Real Estate), or alienate, lien, encumber or otherwise transfer the Assets (including the Water System or the Real Estate), or any part thereof or any interest therein.

6.2 Covenants of Purchaser. Purchaser hereby covenants and agrees that, from the date

of this Agreement through the Closing Date, Purchaser shall use its best efforts to obtain the Purchaser's Required Consents and Approvals and to assist Seller in obtaining, as soon as is reasonably practicable, the Seller's Required Consents and Approvals.

SECTION 7. CONDITIONS PRECEDENT TO CLOSING.

7.1 Conditions Precedent to Purchaser's Obligations. The obligations of the Purchaser under this Agreement shall be subject to the fulfillment of the following conditions precedent, provided, however, that Purchaser may conditionally or unconditionally waive any one or more of the conditions:

7.1.1 Representations and Warranties. Each of the representations and warranties of the Seller and the Shareholders contained in this Agreement shall be true as of the Closing Date.

7.1.2 Covenants. Seller shall have complied with, fulfilled and performed each of the covenants, terms and conditions to be complied with, fulfilled or performed by the Seller and/or the Shareholders under this Agreement on or prior to the Closing Date.

7.1.3 Litigation. No order, decree or ruling of any governmental authority or court shall have been entered and no governmental or other action, suit, claim, investigation or proceeding shall be pending or threatened challenging the legality or validity of the transactions contemplated hereby.

7.1.4 Required Consents and Approvals. Purchaser shall have received delivery, upon terms and conditions satisfactory to it, of all of Seller's and Purchaser's Required Consents and Approvals.

7.1.5 No Adverse Change. There shall have been no material adverse change in the condition (financial, physical or otherwise), operations, business or prospects of the Purchaser or any of the Assets.

7.1.6 Due Diligence. Purchaser shall have reviewed and found satisfactory Seller's business, financial condition, properties, operations and prospects, including, without limitation, the existence of all easements necessary for the use or operation of the Water System, all environmental matters and the financial and other information furnished to it with respect to this Agreement.

7.1.7 Closing Deliveries. Purchaser shall have received from the Seller and/or the Shareholders all of the instruments, documents and considerations described in Section 8.2

and the form and substance of all such materials shall be satisfactory in all respects to the Purchaser and its counsel.

7.2 Conditions Precedent to Seller's Obligations. The obligations of the Seller under this Agreement shall be subject to the fulfillment of the following conditions precedent, provided, however, that Seller may conditionally or unconditionally waive any one or more of the conditions:

7.2.1 Representations and Warranties. Each of the representations and warranties of the Purchaser contained in this Agreement shall be true as of the Closing Date.

7.2.2 Covenants. Purchaser shall have complied with, fulfilled and performed each of the covenants, terms and conditions to be complied with, fulfilled or performed by the Purchaser under this Agreement on or prior to the Closing Date.

7.2.3 Litigation. No order, decree or ruling of any governmental authority or court shall have been entered and no governmental or other action, suit, claim, investigation or proceeding shall be pending or threatened challenging the legality and validity of the transactions contemplated hereby.

7.2.4 Required Consents and Approvals. Seller shall have received delivery, upon terms and conditions satisfactory to it, of all Purchaser's and Seller's Required Consents and Approvals.

7.2.5 Closing Deliveries. Seller shall have received from the Purchaser all of the instruments, documents and considerations described in Section 8.3 and the form and substance of all such materials shall be satisfactory in all respects to the Seller and its counsel.

SECTION 8. CLOSING AND POSSESSION.

8.1 Closing Date and Location. The transactions contemplated hereby shall be consummated at a closing (the "Closing") to be held at the Utilities Service Center, 1969 S. Henderson Street, Bloomington, Indiana, on a mutually agreeable date as soon as possible after all of the conditions precedent contained in this Agreement have been fulfilled or waived (the "Closing Date"), but in no event later than thirty (30) days after the transaction is approved by the Indiana Utility Regulatory Commission, unless the parties otherwise agree in writing.

8.2 Deliveries by Seller and the Shareholders. At Closing, the Seller shall deliver or cause to be delivered to Purchaser the following:

8.2.1 Certificate of Existence. A certificate, dated as of a recent date, evidencing the corporate existence of the Seller in the State of Indiana.

8.2.2 Secretary's Certificate. A certificate dated the Closing Date and executed by the secretary of the Seller on behalf of the Seller: (i) attesting to the incumbency of the officers and directors of the Seller; (ii) certifying the Articles of Incorporation and By-Laws of the Seller; and (iii) certifying that resolutions of the Board of Directors and shareholders of the Seller authorizing the execution of this Agreement and the consummation of the transactions contemplated herein (true, accurate and complete copies of which resolutions shall be attached to such certificate) have been duly adopted and are in full force and effect as of the Closing Date.

8.2.3 Bring Down Certificate. A certificate dated the Closing Date and executed by the President of the Seller to the effect that each of the representations and warranties of the Seller contained in this Agreement or in any written statement or certificate relating thereto delivered to the Purchaser is true and correct in all material respects on and as of such date.

8.2.4 Bill of Sale. A duly executed Bill of Sale, in substantially the form of Schedule 8.2.4 attached hereto, conveying and warranting to the Purchaser title to the Assets.

8.2.5 Assignments. A duly authorized and executed assignment(s) of the Contracts, Warranties and Permits.

8.2.6 Real Estate Documents. All necessary documents to transfer title to the Real Estate to Purchaser.

8.2.7 Other. Such other documents and instruments as Purchaser may reasonably request.

8.3 Deliveries by the Purchaser. At Closing, Purchaser shall deliver to Seller the following:

8.3.1 Certified Copy of Ordinance. A certified copy of the ordinance of the Common Council of the City of Bloomington authorizing the transaction contemplated herein.

8.3.2 Bring Down Certificate. A certificate dated the Closing Date and executed by the President of the City of Bloomington Utility Service Board to the effect that each of

the representations and warranties of the Purchaser contained in this Agreement or in any written statement or certificate relating thereto delivered to the Seller is true and correct in all material respects on and as of such date.

8.3.3 Promissory Note. The Promissory Note.

8.3.4 Other. Such other documents and instruments as Seller may reasonably request.

8.4 Possession. Seller shall deliver possession of the Assets to the Purchaser on the Closing Date.

SECTION 9. OBLIGATIONS OF THE PARTIES AFTER CLOSING.

9.1 Post-Closing Obligations of the Seller.

9.1.1 Discharge of Liabilities. Subject to any applicable statute of limitations and any valid defenses or setoffs, from and after the Closing Date, Seller shall timely pay, satisfy and/or discharge in accordance with past practice or otherwise deal with its liabilities incurred on or before the Closing Date in such a manner as to prevent claims against the Purchaser in respect thereof.

9.1.2 Indemnity. After Closing, Seller shall, jointly and severally, indemnify, defend and save Purchaser harmless from and against any and all liabilities, losses, damages, costs, charges, reasonable counsel fees and other expenses of every nature and character ("Losses"), which are sustained or incurred by Purchaser by reason of or resulting from: (a) any breach of any warranty, covenant or obligation, or any misrepresentation contained in this Agreement made by or on behalf of Seller; (b) the failure of Seller to comply with applicable statutes, regulations, codes or ordinances (including, but not limited to, any and all environmental and public health laws); (c) any actions, failure to act, or any negligence on Seller's part, in the ownership, use, maintenance or operation of the Assets on or before the Closing Date; and (d) the nonperformance of any covenant or obligation of this Agreement required to be performed by Seller after the Closing.

9.1.3 Further Assurances. Seller shall, from time to time, at Purchaser's request and without further consideration, perform such acts and execute and deliver to Purchaser such other and further instruments, documents and other considerations as the Purchaser may reasonably request for the more effective consummation of the transactions contemplated hereby and the satisfaction by Seller of its or their other obligations under this Agreement.

9.2 Post-Closing Obligations of the Purchaser. Purchaser shall indemnify, defend and save Seller harmless from and against any and all Losses which are sustained or incurred by Seller by reason of or resulting from: (a) any breach of any warranty, covenant or obligation contained in this Agreement, or any misrepresentation contained in this Agreement made by or on behalf of Purchaser; and (b) any actions, failure to act, or any negligence on Purchaser's part, in the ownership, use, maintenance or operation of the Assets after the Closing Date.

SECTION 10. TERMINATION.

10.1 By Mutual Agreement. This Agreement may be terminated at any time prior to the Closing by the mutual written consent of the Seller and the Purchaser.

10.2 By Reason of the Failure of Conditions Precedent. Unless otherwise mutually agreed by the Purchaser and the Seller, this Agreement shall terminate in the event (a) any of the conditions set forth in Section 7 are not satisfied or waived on or before October 1, 1999, or (b) any of the easements, licenses, leases, contracts or other agreements contemplated by Section 6.1(e) of this Agreement are not assigned, acquired or provided to Purchaser's satisfaction.

10.3 By Reason of the Failure To Timely Close. This Agreement may be terminated by either the Purchaser or the Seller on written notice to the other in the event the Closing Date shall not have occurred on or before forty-five (45) days after the transaction is approved by the Indiana Utility Regulatory Commission, provided the terminating party is not then in default in the performance of its obligations hereunder.

10.4 By Reason of Default. This Agreement may be terminated by the Purchaser or the Seller if the other defaults in a material way in the due and timely performance of any of its covenants or agreements under this Agreement or the terminating party discovers that any representation or warranty made by the other was, on the date of this Agreement or at any time thereafter prior to the Closing, inaccurate or untrue in any material respect; provided, the terminating party shall first give written notice, in the manner provided in Section 11, of its intention to terminate this Agreement, which notice shall specify with particularity the default or defaults upon which the notice is based. Unless the default is waived, the termination by reason of default shall be effective five (5) business days after such notice, unless the specified default(s) has been cured on or before the effective date for termination.

10.5 Effect of Termination. If this Agreement is terminated pursuant to Section 10.1, 10.2 or 10.3, no party shall have any further liability hereunder and this Agreement shall thereafter be of no further force or effect. If this Agreement is terminated pursuant to Section 10.4, the terminating party shall, at its option, be released from all further obligations and liabilities hereunder, but may

pursue the remedies upon default more fully described in Section 10.6.

10.6 Default and Remedy. In the event that Purchaser or Seller shall, without legal cause, fail or refuse to consummate the transactions contemplated hereby in accordance with the terms and conditions, provisions, representations and warranties hereof, then, in addition to the right of termination provided in Section 10.5, the other party shall have all rights and remedies available at law or in equity including, in the case of the Purchaser, the maintenance of a suit for specific performance. With respect to any such suit for specific performance, the parties hereby agree that the Assets and the rights of the Purchaser herein are unique, and, upon default by the Seller under this Agreement, it would be extremely impracticable to measure the resulting damages to the Purchaser.

SECTION 11. MISCELLANEOUS.

11.1 Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally on or faxed to the party to whom notice is to be given, or on the third day after mailing if mailed to the party to whom notice is to be given, by certified mail, return receipt requested, first class postage prepaid, and properly addressed as follows:

If to Seller: 3480 Inverness Farm Road
Bloomington, Indiana 47401
Attention:_____

If to Purchaser: Director of Utilities
City of Bloomington Utilities
1969 South Henderson
Bloomington, Indiana 47401

Any party may change its address for purposes of this Section 11.1 by giving the other party written notice of the new address in the manner set forth above.

11.2 Benefit of Agreement. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

11.3 Choice of Law. This Agreement shall be construed in accordance with the laws of the State of Indiana.

11.4 Headings. Section headings in this Agreement are for convenience of reference only and shall not govern the interpretation of any of the provisions of this Agreement.

11.5 Entire Agreement; Modification. This Agreement, including the Schedules and Exhibits attached hereto, contains the entire agreement among the Seller, the Shareholders and the Purchaser with respect to the subject matter hereof; all representations, promises and prior or contemporaneous understandings among the parties with respect to the subject matter hereof are merged into and expressed in this Agreement; and any and all prior agreements among the parties with respect to the subject matter hereof are hereby canceled. This Agreement shall not be amended, modified or supplemented without the written agreement of the Seller, the Shareholders and the Purchaser at the time of such amendment, modification or supplement.

11.6 Expenses. In any action at law or in equity to enforce any of the provisions or rights under this Agreement, the unsuccessful party or parties to such litigation, as determined by the court in a final judgment or decree, shall pay the successful party or parties all costs, expenses and reasonable attorneys' fees incurred by the successful party or parties (including, without limitation, costs, expenses and fees on any appeals), and if the successful party or parties recovers judgment in any such action or proceeding, such costs, expenses or attorneys' fees shall be included as part of the judgment.

11.7 Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any of the parties hereto may execute this Agreement by signing any such counterpart.

11.8 Incorporation by Reference. All Schedules and Exhibits hereto are incorporated herein by this reference. Each of the other documents delivered pursuant hereto shall be made subject to all of the terms, covenants, conditions, obligations, stipulations and agreements contained in this Agreement to the same extent and effect as if fully set forth therein, and this Agreement is made subject to all of the terms, covenants, conditions, obligations, stipulations and agreements contained in the other documents to the same extent and effect as if fully set forth herein.

11.9 Risk of Loss. All risk of loss or damage to the Assets shall be borne by the Seller prior to the closing.

11.10 Assignment. Neither this Agreement, nor any right hereunder, may be assigned by either party hereto without the prior written consent of the other party.

11.11 Survival of Representations and Warranties. The representations and warranties of the parties contained in this Agreement shall survive the execution and delivery of this Agreement,

the Closing Date and the completion of the transaction contemplated herein in all respects.

11.12 Severability. In the event any provision of this Agreement or any of the other documents delivered pursuant hereto shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not affect the validity, enforceability or legality of the remaining provisions hereof or thereof, all of which shall continue unaffected and unimpaired thereby.

11.13 Utility Service Board. Whenever this Agreement provides for an approval, waiver, or exercise of the right to terminate on behalf of Purchaser, such approval, waiver or exercise may be provided by Purchaser's Utility Service Board.

IN WITNESS WHEREOF, the parties hereto have executed the Agreement as of the day and year first above written.

SELLER:

Russell Road Water Corporation

Date: May 25, 1999

Printed: Michael Pollock

Its: Director

PURCHASER:

City of Bloomington, Indiana,
by and through its Utility Service Board

Date: Samuel Vaught

SAMUEL VAUGHT

PRESIDENT

SCHEDULE 1.1

Water System

Russell Road Water Corporation
System Inventory

Location		Subdivision	Pipe Size/Length				
From	To		2" Lft.	3" Lft.	4" Lft.	6" Lft.	8" Lft.
S.R. 45	Booster Pump Station	NA					450
Booster Pump	North Along Russell Road	NA			3300		
Booster Pump	South to Tamarron Drive	Tamarron Phase II			800		
S. R. 45	West Along Tamarron Dr.	Tamarron Phase II				2160	
Tamarron Dr.	South Along Callery Drive	Tamarron Phase II				460	
Callery Crt.	West toTamarron Drive	Tamarron Phase II				780	
Russell Road	West Along Rachel's Glen Road	Rachel's Glen		1400			
Rachel's Glen Road	Westernly To The End	Rachel's Glen	600				
Russell Road	West Along Devonshire Crt	Devonshire South			1988		
Devonshire Crt.	West From End of Cul-de-sac	Devonshire South	350				
Russell Road	West Along Devonshire Lane	Devonshire North			2950		
Devonshire Lane	North Along Exeter Lane	Devonshire North			830		
Devonshire Lane	Westernly Along Exeter Lane	Devonshire North			760		
Exeter Lane	From Cul-de-sac West	Devonshire North	470				

Russell Road Water Corporation
System Inventory

Location			Subdivision	Pipe Size/Length				
From	To			2"	3"	4"	6"	8"
				Lft.	Lft.	Lft.	Lft.	Lft.
Russell Road	Along Mabels Way		Lanam Ridge View			2640		
Russell Road	Along Commodore Trail		Lanam Ridge View			2100		
Devonshire North	Along Russell Road North		Lanam Ridge View			470		
Tamarron Drive	Northwesterly		Tamarron Phase V				320	
Tamarron Drive	West Along Line "W-1"		Tamarron Phase V			320		
Tamarron Drive	West Along Line "W-1A"		Tamarron Phase V			230		
Tamarron Drive	West Along Line "W-2"		Tamarron Phase V			170		
Tamarron Drive	West Along Line "W-4"		Tamarron Phase V			147		
			Peterson			484		
			TOTAL	1420	1400	17189	3720	450

Russell Road Water Corporation
System Inventory

System Value	Item	Length	Unit	Cost	Total
	2" PVC Pipe	1420		$11.00	$15,620.00
	3" PVC Pipe	1400		$12.00	$16,800.00
	4" PVC Pipe	17189		$13.00	$223,457.00
	6" DIP Pipe	3720		$15.50	$57,660.00
	8" DIP Pipe	450		$18.50	$8,325.00
	3/4 - Inch Meter Setup		119	$495.00	$58,905.00
	1 - Inch Meter Setup		3	$595.00	$1,785.00
	Booster Pump Station		1	$25,000.00	$25,000.00
			System Value		$407,552.00

** TOTAL PAGE.04 **

SCHEDULE 3.2

PROMISSORY NOTE

$170,000.00 **Bloomington, Indiana**
_____ __, 1999

FOR VALUE RECEIVED, The City of Bloomington, Indiana ("Maker"), in the county of Monroe, a municipality of the State of Indiana hereby acknowledges itself indebted and for value received promises to pay to the Russell Road Water Corporation, or its assigns, ("Holder") solely out of the special revenue fund hereinafter referred to the sum of One Hundred Seventy Thousand Dollars ($170,000), together with interest thereon from the date hereof at the rate of Four and One-Half Percent (4.5%) per annum, at the times and in the amounts set forth below:

(a) Commencing on the ___ day of the month following the execution of this note, and continuing on the ___ day of each month thereafter, Maker shall pay to Holder a payment in the amount of One Thousand Seven Hundred Sixty-One Dollars and Eighty-Five Cents ($1,761.85);

(b) On the last day of the month that is eleven (11) months after the execution of this note (the "Maturity Date"), the Maker shall pay the Holder the remaining principal balance, together with unpaid accrued interest thereon; provided, however, the Maker in its sole discretion and subject to the approval of the Indiana Utility Regulatory Commission may elect to extend the Maturity Date by an additional period of time not to exceed nine (9) years (the "Extended Maturity Date"). If the Maker so elects to extend the Maturity Date, Maker shall continue to make payments in accordance with paragraph (a) above until the Extended Maturity Date, at which time the Maker shall pay the Holder the remaining principal balance, if any, together with unpaid accrued interest thereon, if any.

The unpaid principal balance of the note may be prepaid either in whole or in part, at any time

without premium or penalty.

This note is the only note of an authorized issue in the amount of One Hundred Seventy Thousand Dollars ($170,000).

This note is issued pursuant to the provisions of Title 8, Article 1.5 of the Indiana Code (the "Act") and an ordinance entitled "An Ordinance of the Common Council of the City of Bloomington, Monroe County, Indiana Approving and Authorizing (1) An Agreement for the Acquisition of the Assets of the Russell Road Water Corporation, and (2) the Issuance of a Promissory Note in the Amount of $170,000 to Fund the Acquisition" duly adopted by the Common Council of such City of Bloomington, Indiana on ____ day of _____, 1999.

This note, together with interest thereon, are not a general obligation of the Maker, but are a special, limited obligation payable solely from the Net Revenues of the City of Bloomington Utilities, Water Department (the "Utility"). For purposes of this note, "Net Revenues" means the gross revenues of the Utility less only the payment of reasonable expenses of operation, repair and maintenance. This note and the payments hereunder are not on a parity with any existing bonds of the Maker and constitute a charge on the Net Revenues that is second in priority to any existing bond obligations. MAKER SHALL NOT BE OBLIGATED TO PAY THIS NOTE OR THE INTEREST HEREON EXCEPT FROM THE SPECIAL REVENUE ACCOUNT IDENTIFIED ABOVE, AND THIS NOTE SHALL NOT IN ANY RESPECT CONSTITUTE A CORPORATE INDEBTEDNESS OF THE MAKER WITHIN THE PROVISIONS AND LIMITATIONS OF THE CONSTITUTION OF THE STATE OF INDIANA.

It is hereby certified and recited that all conditions, acts and things required by the Constitution and statutes of the State of Indiana to exist, to have happened and to have been performed precedent to and in the issuance of this note, exist, have happened and have been

performed.

In witness whereof, the City of Bloomington, Indiana has caused this note to be signed by its Utilities Service Board, and this note to be dated as of this ____ day of _____, 1999.

CITY OF BLOOMINGTON, INDIANA
By and through its UTILITY SERVICE BOARD

_____
Samuel Vaught, President

SCHEDULE 4.5

Seller's Required Consents and Approvals

Approval By IURC. Seller shall petition the Indiana Utility Regulatory Commission ("IURC") for approval of and the IURC shall have approved the following, free from burdensome or unsatisfactory conditions and restrictions:

(a) this Agreement and all terms hereunder including the Purchase Price; and

(b) the transfer of the Assets by the Seller to the Purchaser.

The determination of whether or not the approvals are satisfactory shall be within the discretion of both the Purchaser and Seller. Each party shall immediately notify the other when Commission approval has been obtained to its satisfaction. If either Purchaser or Seller determines satisfactory approval is unobtainable, it shall notify the other, whereupon this Agreement may be terminated at the election of either party, without obligation to the other party. Seller and Purchaser agree to cooperate with each other in obtaining such approvals. The Purchaser shall control the prosecution of such proceeding before the IURC, but shall neither make any representations on behalf of nor submit to any conditions affecting Seller without Seller's prior written consent. Seller, at its sole expense, shall retain an attorney who will represent Seller and who will enter an appearance before the IURC. Purchaser will intervene in the IURC proceeding and will retain an attorney who will represent Purchaser and who will enter an appearance before the IURC. At Purchaser's sole expense, the attorney retained by the Purchaser will, with Seller's cooperation and consistent with and subject to the applicable requirements of the Indiana Rules of Professional Conduct, prepare for review by Seller's counsel the petition, prefiled testimony, proposed order, responses to discovery requests, and all other documents to be filed on behalf of Seller in the IURC proceeding. To the extent either party chooses to retain its own consultants, accountants, or financial advisors, it shall be at that party's sole expense.

SCHEDULE 5.4

Purchaser's Required Consents and Approvals

Approval by the Common Council. The City of Bloomington Common Council shall have adopted an Ordinance approving this Agreement and the transaction contemplated herein.

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