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Cook County Recorder of Deeds

Date: 02/05/2004 08:49 AM Pg: 1 of 34

RECORDED DOCUMENT TITLE

*RESOLUTION R47-2003*

*A RESOLUTION AUTHORIZING THE MAYOR AND VILLAGE CLERK TO  
EXECUTE A CERTAIN AGREEMENT BETWEEN THE VILLAGE OF  
WOODRIDGE AND CATELLUS DEVELOPMENT CORPORATION*

SUBMITTED BY AND RETURN TO:

Village of Woodridge  
Office of the Village Clerk  
5 Plaza Drive  
Woodridge, Illinois 60517



VILLAGE OF WOODRIDGE

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State of Illinois

Counties of Dupage, Will and Cook

**THE VILLAGE OF WOODRIDGE**

To all to whom these presents shall come greetings:

This is to certify that I, Eileene Nystrom, am the duly elected, qualified and acting Clerk of the Village of Woodridge, DuPage, Will and Cook Counties, Illinois; that I am the Keeper of the files, records, and seal of the said Village; that the following is a true, perfect and correct copy of

**RESOLUTION NO. R47-2003**

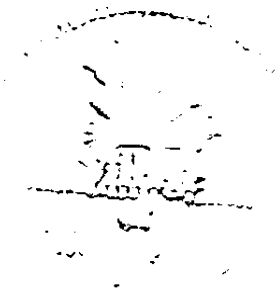
**A RESOLUTION AUTHORIZING THE MAYOR AND VILLAGE CLERK TO EXECUTE A CERTAIN AGREEMENT BETWEEN THE VILLAGE OF WOODRIDGE AND CATELLUS DEVELOPMENT CORPORATION**

As it appears from the files in my office now remaining I further state that this certification is issued under my hand and seal of the Village of Woodridge as provided for in Chapter 735 ILCS 5/8-1203.

In Witness Whereof, I have hereunto set my hand and caused to be affixed the Corporate Seal of the Village of Woodridge, DuPage, Will and Cook Counties, Illinois.

Done at Woodridge, Illinois this 8<sup>th</sup> of October, 2003

EILEENE NYSTROM  
Village Clerk



OFFICE OF THE VILLAGE CLERK

VILLAGE OF WOODRIDGE

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RESOLUTION NO.

R47-2003

A RESOLUTION AUTHORIZING THE MAYOR AND VILLAGE CLERK TO EXECUTE A CERTAIN AGREEMENT BETWEEN THE VILLAGE OF WOODRIDGE AND CATELLUS DEVELOPMENT CORPORATION

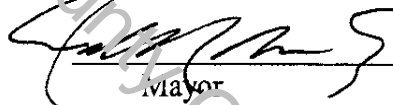
BE IT RESOLVED by the Mayor and Board of Trustees of the Village of Woodridge, DuPage, Will and Cook Counties, Illinois, that the Mayor and Village Clerk be and the same are hereby authorized to execute an Agreement between the Village of Woodridge and Catellus Development Corporation in substantially the form attached hereto as Exhibit "A" with such changes as are approved by the Village Attorney.

ADOPTED this 24<sup>th</sup> day of July, 2003.

Trustee Beavers	<u>Aye</u>	Trustee Frank	<u>Aye</u>
Trustee Brandt	<u>Aye</u>	Trustee Kagann	<u>Aye</u>
Trustee Cunningham	<u>Aye</u>	Trustee Murphy	<u>Aye</u>

Mayor Murphy \_\_\_\_\_

APPROVED this 24<sup>th</sup> day of July, 2003.

  
Mayor

ATTEST:

  
Village Clerk

Filed in the office of the Village Clerk and published in pamphlet form by authority of the Mayor and Board of Trustees of the Village of Woodridge, DuPage, Will and Cook Counties, Illinois this 24<sup>th</sup> day of July, 2003.

  
Village Clerk

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## AGREEMENT

THIS AGREEMENT, made and entered into this 21<sup>st</sup> day of August, 2003, by and between the VILLAGE OF WOODRIDGE, an Illinois municipal corporation (the "Village") and CATELLUS DEVELOPMENT CORPORATION ("Catellus"), the Village and Catellus sometimes hereinafter referred to as a "Party" and collectively referred to as the "Parties".

## WITNESSETH

WHEREAS the Village is a home rule unit of government and is authorized to provide for water supply and sewage systems both within and outside of its corporate limits pursuant to various Divisions of the Illinois Municipal Code (65 ILCS 5/1-1-1, *et seq.*), including, but not limited to, Division 137, Division 139 and Division 146; and

WHEREAS, pursuant to Section 10 of Article VII of the Constitution of the State of Illinois, the Village is authorized to contract or otherwise associate with individuals, associations and corporations in any manner not prohibited by law or by ordinance; and

WHEREAS, Illinois-American Water Company ("Illinois-American"), a public utility subject to the Illinois Public Utilities Act (220 ILCS 5/1-101 *et seq.*), currently owns and operates certain sanitary sewer and water treatment facilities, described in Exhibit "A" attached hereto and incorporated herein (the "Facilities"), along with certain distribution and collection systems, that by order(s) of the Illinois Commerce Commission (the "ICC"), presently provide service within the area located south of I-55, north of the Des Plaines River and, in general, lying west of Lemont Road. The service area as authorized by the ICC is depicted on Exhibit "B" attached hereto and incorporated herein (the "Certificated Area"); and

WHEREAS, the following agreements and correspondence exist between and among Illinois American's predecessor, Citizens Utilities Company of Illinois ("Citizens") and Catellus and

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its predecessors, Chanslor-Western Oil and Development Company ("Chanslor") and Santa Fe Pacific Realty Corporation ("Santa Fe") with respect to the Facilities and the Certificated Area:

- A. An Agreement dated August 16, 1965 between Chanslor and Citizens, as supplemented by a letter of the same date between the same parties;
- B. A letter dated March 10, 1966 from Chanslor to Citizens;
- C. A letter dated February 20, 1967 from Chanslor to Citizens;
- D. A Supplemental Agreement dated January 9, 1973 between Chanslor and Citizens;
- E. An Amendment Agreement dated January 26, 1990 between Santa Fe and Citizens; and
- F. Agreement for Upgrade of Wastewater Treatment Facility, between Catellus and Citizens, dated September 10, 1997; and
- G. Other agreements not presently known to the Parties.

These documents are sometimes collectively referred to herein as the "Existing Facilities Agreements"; and

WHEREAS, the following additional agreements exist with respect to the Facilities:

- A. A Wholesale Wastewater Transportation and Treatment Services Agreement, dated August 19, 1987, between the Village of Romeoville and Citizens;
- B. First Amendment to Real Estate Sale Contract dated May 18, 1989 between ANNMAC Corporation and Santa Fe);
- C. A Water and Sewer Service Construction Agreement dated June 30, 1992 between Citizens and The Prudential Insurance Company of America;
- D. Argonne Bridge Development, LLC Water/Sewer Service Consent Agreement dated July 22, 2002 between Catellus and Illinois-American to provide water and sanitary sewer service to Bridge-Phase 1;
- E. Water/Sewer Service Consent Agreement dated July 22, 2002 between Catellus and Illinois-American to provide water and sanitary sewer service to Internationale Estates, owned by Sal Rexhepi;

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- F. Water/Sewer Service Agreement dated July 19, 2002 between Catellus and Sal Rexhepi;
- G. Water Service Consent Agreement dated August 7, 2002 between Catellus and Illinois-American to provide water service to property owned by Les and Susan Bograd in the vicinity of Internationale Centre;
- H. Water Service Agreement dated August 7, 2002 between Catellus and Les Bograd and Susan Bograd;
- I. Darien Gas Station Water and Sanitary Sewer Service Agreement dated October 22, 2002 between Catellus and Landquest VIII, LCC;
- J. Darien Gas Station Water and Sanitary Sewer Service Consent Agreement dated November 13, 2002 between Catellus and Illinois-American;
- K. Special Private Fire Protection Services Agreement dated November 8, 2002 between Davey Bridge, LLC and Illinois-American;
- L. Special Private Fire Protection Services Agreement dated November 19, 2002 between Landquest VII and Illinois-American;
- M. Water and Sanitary Sewer Service Connection Agreement dated November 19, 2002 between Landquest VII and Illinois-American;
- N. Water and Sanitary Sewer Service Construction Agreement dated November 19, 2002 between Illinois-American and Landquest VIII;
- O. Water and Sewer Service Construction Agreement dated November 8, 2002 between Davey Bridge, LLC and Illinois-American;
- P. Water and Sanitary Sewer Service Connection Agreement dated November 8, 2002 between Davey Bridge, LLC and Illinois-American;
- Q. Water and Sanitary Sewer Service Agreement dated November 20, 2002 between Prairie State Enterprises of Darien, LLC and Landquest VIII, LCC and Illinois-American.
- R. Water and Sewer Service Construction Agreement dated October 24, 2002 between Citizens Utilities Company of Illinois and Bridge Development Partners, LLC;
- S. Davey Bridge Development, LLC and Hillcrest Bridge, LLC Water/Sewer Service Agreement dated April 1, 2003 between Catellus, Davey Bridge Development, LLC and Hillcrest Bridge, LLC;

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- T. Argonne Bridge Development, LLC Water/Sewer Service Agreement dated February 1, 2001 between Catellus and Argonne Bridge Development, LLC;
- U. Argonne/Nestle Water/Sewer Service Agreement dated July 23, 2003 among Catellus, Argonne Bridge Development, LLC and Nestle Waters North America, Inc. and Illinois-American;
- V. Water and Sewer Construction Agreement dated July 19, 1991 between Citizens and Lemont Road Venture, Inc.;
- W. Water and Sewer Service Agreement dated September 26, 1997 between Citizens and Industrial Developments International, Inc;
- X. Water and Sewer Service Agreement dated December 9, 1986 between Santa Fe Land Improvement Company and Chicago-Santa Fe Partnership;
- Y. Water and Sewer Connection Agreement dated March 20, 2002 between Illinois-American and JACS, LLC;
- Z. Special Private Fire Protection Services Agreement dated March 20, 2002 between Illinois-American and JACS, LLC
- AA. Water Service Construction Agreement dated March 22, 2002 between Illinois-American and JACS, LLC;
- BB. Water Service Agreement dated January 14, 2002 between Catellus and JACS, LLC;
- CC. Water and Sewer Connection Agreement between Citizens and Transport or Transportation International Pool;
- DD. Special Private Fire Protection Services Agreement dated August 2, 2001 between Citizens and Transport or Transportation International Pool;
- EE. Water Connection Agreement dated December 23, 1996 between Citizens and Drew Enterprises, LLC;
- FF. Water and Sewer Agreement dated November 14, 1997 between Citizens and Whitney M. Christopher Corp. for Arbor Ridge Subdivision, Lots 1 – 29;
- GG. Rider to Agreement dated September 25, 1996 between Catellus and Whitney M. Christopher Corp. for Arbor Ridge Subdivision;

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- HH. Water and Sewer Service Construction Agreement dated September 26, 1996 between Citizens and Whitney M. Christopher;
- II. Water and Sewer Service Construction Agreement dated October 25, 2000 between Citizens and The Hindu Temple of Greater Chicago,
- JJ. Water and Sewer Consent Agreement dated July 11, 2000 between Catellus and The Hindu Temple of Greater Chicago;
- KK. Water Agreement dated March 16, 1999 between Citizens and Fred Bartuch, Jr.;
- LL. Special Private Fire Protection Services Agreement dated April 12, 1999 between Citizens and Fred Bartuch, Jr.,
- MM. Water and Sewer Agreement dated March 20, 1997 between Citizens and Bromberck School/Fred Preuss;
- NN. Water Service Agreement dated May 12, 2003 between Catellus and Donald Dasbach;
- OO. Forest View Subdivision Water/Sewer Service Agreement dated July 2, 2003 between Catellus and Globe Real Estate Development Company;
- PP. Forest View Subdivision Water/Sewer Service Consent Agreement dated August 7, 2003 between Catellus and Illinois-American;
- QQ. There may be certain other written agreements not presently known to the Parties.

These agreements are sometimes collectively referred to herein as the "Existing Service Agreements"; and

WHEREAS, the Parties acknowledge that prior to February 1, 2001, Catellus authorized certain users to connect to the Facilities without written service agreements and that Catellus has tendered to the Village a list of authorized users of the Facilities of which Catellus has knowledge, said list being attached hereto and incorporated herein as Exhibit "C"; and

WHEREAS, pursuant to the Existing Facilities Agreements, Catellus is responsible for the cost of capital improvements to the Facilities under certain circumstances and has the power to



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designate the users authorized to connect to the Facilities and to utilize the water and sewer capacity of the Facilities (the "Capacity"); and

WHEREAS, the Village and Catellus desire to enter into an agreement whereby the Village will purchase the Capacity and Catellus will assign and the Village will assume all of Catellus' rights and obligations under the Existing Facilities Agreements and the Existing Service Agreements.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties do hereby agree as follows:

Section 1. Incorporation of Preambles. The preambles set forth hereinabove are incorporated herein as substantive provisions of this Agreement as if fully set out in this Section 1.

Section 2. Purchase of Capacity. Catellus hereby agrees to sell and the Village hereby agrees to purchase the Capacity for the price of \$903,906.00. The Village shall deliver the purchase price to Catellus no later than September 1, 2003, or such later date as the Parties may mutually agree (the "Closing Date"). Attached hereto and incorporated herein as Exhibit "D" is a calculation of the purchase price. Should Catellus receive certain recapture fees, as indicated on Exhibit "D", prior to the Closing Date, the purchase price will be adjusted accordingly. Upon delivery of the purchase price to Catellus, Catellus shall be deemed to have transferred and assigned to the Village all of its right, title, interest obligations, liabilities or responsibilities under, in and to the Facilities, the Capacity, the Existing Facilities Agreements and the Existing Service Agreements and the Village shall be deemed to have accepted the transfer and assignment and have agreed to perform Catellus' responsibilities thereunder. Accordingly, Catellus shall have no further right, title, interest, obligations, liabilities or responsibilities in connection with the same. Without otherwise

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affecting Catellus' rights under this Agreement, Catellus acknowledges that pursuant to the terms of the Agreement between the Village and Illinois-American dated August 21, 2003 (the "Illinois-American Agreement"), the Village will be relieved of the obligations under the Existing Facilities Agreements. Further, the Village shall be deemed to be the sole owner of the Capacity, as the same may, from time to time, be expanded and modified pursuant to the terms of the Illinois-American Agreement.

Simultaneously with the delivery of the purchase price, Catellus shall execute a certificate in the form attached hereto and incorporated herein as Exhibit "E" advising Illinois-American that: (a) Catellus has transferred and assigned to the Village all of its right, title, interest, obligations, liabilities and responsibilities in and to the Facilities, the Capacity, the Existing Facilities Agreements and the Existing Service Agreements, (b) the Village has accepted the transfer and assignment and has agreed to perform Catellus' responsibilities thereunder pursuant to the terms of the Illinois-American Agreement, and (c) Illinois-American is authorized to rely upon the certification as a waiver by Catellus of any future claim of right under any of the Existing Facilities Agreements or the Existing Service Agreements and, henceforward Illinois-American may deal with and recognize the Village as the exclusive owner of any right, title or interest previously held by Catellus for all purposes.

Section 3. Capacity Reserved for Catellus. The Village acknowledges that Catellus shall have the right to utilize 122 PE's, at no cost, to be used for the development of Internationale Centre ("Catellus PE's"); provided, however, that none of the Capacity described in this Section 3 shall be used to serve property outside of Internationale Centre, the boundaries of which are shown on the map attached hereto and incorporated herein as Exhibit "F". Catellus PE's may be used to serve existing buildings, future buildings or in sales to future users at International Centre, and so long as

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any of Catellus PE's remain unused, Catellus has the first right to sell Catellus PE's to any users within Internationale Centre.

At such time as Catellus desires to utilize any of the above-described Capacity, it shall notify the Village and Illinois-American and shall also enter into the standard agreements then in existence between Illinois-American, the Village and users of the Facilities (provided, however, that such agreement shall not impose a charge for the 122 Catellus PE's). Should the Village receive any request for Capacity by a potential user within Internationale Centre while any Catellus PE's remain outstanding, the Village shall notify Catellus of such request. Catellus shall, within ten (10) days of such notification from the Village, notify the Village that either (i) it intends to sell Catellus PE's to such user or (ii) the Village can sell Capacity to such user.

In addition to the above-described Capacity, Catellus shall have the right to purchase additional Capacity, if available, from the Village on the same basis as any other user of the Facilities and at a price equal to the current rate that the Village is then charging for Capacity. Except as otherwise provided herein, Catellus' use of Capacity shall be subject to the same rules and regulations as any other user of the Facilities.

Catellus shall notify the Village if Catellus (i) receives any additional requests for water or sewer capacity prior to the Closing Date or (ii) receives any additional recapture fees (other than those listed on Exhibit "D") relating to the sale of water or sewer capacity prior to the Closing Date. Notwithstanding the foregoing, Catellus may sell or use additional Capacity within Internationale Centre at any time prior to the Closing Date; however, any additional PE's so sold or used shall be credited against the Catellus PE's.

Section 4. Reservation of Capacity for Bolingbrook. The Parties acknowledge that Catellus has been negotiating the sale of 400 PE's of capacity to the Village of Bolingbrook for \$1,125 per

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PE with payments plus interest to be made over five (5) years. In the course of negotiations regarding this Agreement, Catellus has apprised the Village of the continuing negotiations with Bolingbrook. The Village has been provided with the most recent draft of an agreement among Catellus, Illinois-American and Bolingbrook regarding such sale, said draft dated August 27, 2002, and a copy of a letter dated December 20, 2002 from Sue A. Schultz to Drew Emmel (collectively, the "Draft Documents"). The Village will negotiate with Bolingbrook in good faith and provide Bolingbrook with 400 PE's of Capacity under terms and conditions generally consistent with the Draft Documents, subject to the Village, Bolingbrook and Illinois-American entering into a mutually satisfactory agreement regarding such sale..

Section 5. Representations and Warranties of Catellus. Catellus represents and warrants to the Village that, as of the date hereof:

- (A) Catellus is a corporation duly organized and existing and in good standing under the laws of the State of Delaware, with full corporate power and authority to own its assets and conduct its business.
- (B) Catellus has the full legal power to enter into and perform this Agreement and the consummation of the transactions contemplated by this Agreement in accordance with its terms, including, but not limited to, the assignment of Catellus' interest in the Existing Facilities Agreements and the Existing Service Agreements, will not violate any provision of law, rule or regulation or of the articles of incorporation or by-laws of Catellus or result in the breach or termination of any provision of or constitute a default under, or result in the creation of any lien claim or encumbrance pursuant to, any indenture, license, permit, authorization, court order, judgment or decree agreement or other instrument to which it is a party or by which any of its properties may be bound.
- (C) Catellus, through its Board of Directors and appropriate officers, has taken all necessary legal action to authorize and approve the execution, delivery and performance of this Agreement and all of the transactions contemplated hereby.
- (D) Catellus has obtained all approvals and consents necessary for the execution, delivery and performance of this Agreement and all of the transactions

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contemplated hereby.

- (E) The Village has tendered to Catellus an engineering report dated February 8, 2002, entitled "Santa Fe Water Reclamation Facility Existing Treatment Plant Evaluation", prepared by Crawford, Murphy & Tilly, Inc.
- (F) To the knowledge of Catellus, there are no lawsuits, claims, demands or governmental proceedings pending, in prospect, asserted or threatened against or relating to Catellus that would affect the Facilities or the Capacity of the Facilities, nor is there any meritorious basis for any such suit, claim, demand or proceeding, nor is there in existence any judgment or award against Catellus related to or affecting the Facilities or the Capacity, and Catellus shall indemnify and hold the Village harmless from all liability, loss, cost or expense, including court costs and attorneys' fees relating to any such judgments, awards, litigation, suits, demands or proceedings regardless of whether Catellus has knowledge thereof, if the basis for such matter accrued prior to the Closing Date as a result of Catellus' gross negligence or willful misconduct. Catellus has no knowledge of any investigation presently being undertaken for violation of any law or regulation related to or affecting the Facilities.
- (G) No representation or warranty made herein by Catellus, nor any statement or certificate given or to be given to the Village pursuant hereto, or with respect to the transactions contemplated hereby, contains or will contain any untrue statement of a material fact, or omits or will omit to state a material fact necessary to make the statements contained herein or therein not misleading, and Catellus has made full disclosure of all material facts in its possession with respect to the physical condition of the properties and assets of the Facilities and the liabilities, other obligations of Catellus affecting the Facilities. In connection with this representation and warranty, the Village acknowledges that Catellus has made no independent investigation of the physical condition of the Facilities.
- (H) To the knowledge of Catellus, (i) each of the Existing Service Agreements is in full force and effect and is enforceable in all material respects in accordance with its terms, except as limited by bankruptcy, insolvency, reorganization or similar laws; (ii) no default exists under the terms of, and no event has occurred which, with lapse of time, the giving of notice or both, would constitute an event of default under any of the Existing Service Agreements; (iii) the Existing Service Agreements and Existing Facilities Agreements listed in the preambles to this Agreement are the only such agreements of which Catellus has specific knowledge; however, should any additional agreements be discovered by Catellus, Catellus shall immediately notify the Village of such discovery and provide copies thereof to the Village.

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- (I) To its knowledge, Catellus is in full compliance with all of the Existing Facilities Agreements and the Existing Service Agreements. To the knowledge of Catellus, Illinois-American has not given Catellus notice, either written or oral, (i) that any particular capital improvement or improvements is presently required for which Illinois-American intends to make a claim against Catellus under the terms of the Existing Facilities Agreements, (ii) that there exists a shortfall in Illinois-American's operation and maintenance expenses as to which Catellus has a funding obligation, or (iii) that Catellus is deficient in the performance of any other covenant or condition of any of the Existing Facilities Agreements or Existing Service Agreements for which Illinois-American has, or may have, a cause of action for the recovery of monetary damages or declaratory and injunctive relief. Catellus will continue to be responsible for capital improvements constructed pursuant to the Existing Facilities Agreements up to the Closing Date. Catellus has been informed by Illinois-American that, pursuant to the Existing Facilities Agreements, Catellus owes \$8,654.57 to Illinois-American for capital improvements constructed prior to the Closing Date. Catellus will promptly pay said amount to Illinois-American.

Except as expressly set forth in this Section 5, Catellus is not making any representations or warranties to the Village, and the Village is relying on its own investigations and discussions with Illinois American regarding the subject matter of this Agreement. The representations and warranties of Catellus will be deemed to be continuing representations and warranties up to and including the Closing Date (but not thereafter), with the same force and effect as though such representations and warranties had been made as of the Closing Date unless Catellus provides the Village with written notice of a change in any representation or warranty prior to the Closing Date. Should Catellus provide such written notice, the Village shall have the option to terminate this Agreement. For the purposes hereof, the phrase "to the knowledge of Catellus" and similar phrases shall mean the current, actual knowledge of Kevin Matzke, Joe Conroy or Jonathan Dennis.

Section 6. Representations and Warranties of the Village. The Village represents and warrants to Catellus as follows:

- (A) The Village is an Illinois municipal corporation and a home rule unit of



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government, with full legal power to enter into and perform this Agreement and the consummation of the transactions contemplated by this Agreement in accordance with its terms will not violate any provision of law, ordinance or regulation of the Village or result in the breach or termination of any provision of or constitute a default under, or result in the creation of any lien claim or encumbrance pursuant to, any indenture, license, permit, authorization, court order, judgment or decree agreement or other instrument to which it is a party or by which any of its properties may be bound.

- (B) The Village, through its Mayor and Board of Trustees and appropriate officers, has taken all necessary legal action to authorize and approve the execution, delivery and performance of this Agreement and all of the transactions contemplated hereby.

The representations and warranties of the Village will be deemed to be continuing representations and warranties up to and including the Closing Date, with the same force and effect as though such representations and warranties had been made as of the Closing Date.

Section 7. Indemnification. To the fullest extent permitted by law, Catellus hereby agrees to defend, indemnify and hold harmless the Village against all loss, damages, claims, suits, liabilities, judgments, costs and expenses which may in anyway, and at any time either prior or subsequent to the Closing Date, accrue against the Village, its officials, agents and employees, arising in whole or in part or in consequence of any material misrepresentation or material breach of warranty contained in this Agreement, or the performance of this Agreement by Catellus, its officials, agents and employees, except that arising out of the sole legal cause of the Village, its officials, agents or employees, and Catellus shall, at its own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefore or incurred in connection therewith, and, if any judgment shall be rendered against the Village, its official, agents and employees, in any such action arising due to a material misrepresentation or breach, Catellus shall, at its own expense, satisfy and discharge the same. Except as expressly set forth in this Section 7, after the Closing Date, Catellus shall not have any liability or obligation to the Village under this

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Agreement for any reason whatsoever.

To the fullest extent permitted by law, the Village hereby agrees to defend, indemnify and hold harmless Catellus against all loss, damages, claims, suits, liabilities, judgments, costs and expenses which may in anyway accrue against Catellus, its officials, agents and employees, arising in whole or in part or in consequence of (a) any material misrepresentation or material breach of warranty contained in this Agreement, (b) the performance of this Agreement by the Village, its officials, agents and employees, except that arising out of the sole legal cause of Catellus, its officials, agents or employees, or (c) the Village's failure to perform any Village obligation or satisfy any Village liability arising under the Existing Facilities Agreements subsequent to the Closing Date or otherwise relating to the Village's obligations regarding the Facilities, the Capacity or the Existing Service Agreements, except that arising out of the sole legal cause of Catellus, its officials agents or employees, and the Village shall, at its own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefore or incurred in connection therewith, and, if any judgment shall be rendered against Catellus, its official, agents and employees, in any such action, the Village shall, at its own expense, satisfy and discharge the same.

Section 8. Notices. All notices and requests required pursuant to this Agreement shall be sent by certified mail as follows:

To the Village:

Village of Woodridge  
5 Plaza Drive  
Woodridge, Illinois 60517

with copies to:

Gorski & Good  
211 South Wheaton Avenue  
Wheaton, Illinois 60187



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To Catellus: Catellus Development Corporation  
1200 Internationale Parkway  
Suite 100  
Woodridge, Illinois 60517

with copies to: Allen Matkins Leck Gamble & Mallory LLP  
1900 Main Street, 5<sup>th</sup> Floor  
Irvine, California 92614-7321  
Attn: Drew M. Emmel

or at such other addresses as the Parties may indicate in writing to the other either by personal delivery or by certified or registered mail, return receipt requested, with proof of delivery thereof.

Section 9. Law Governing. This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois.

Section 10. Third Party Beneficiaries. The Village and Catellus agree that this Agreement is for the benefit of the Parties hereto and not for the benefit of any third party beneficiary. No third party shall have any rights or claims against the Village or Catellus arising from this Agreement.

Section 11. Time of the Essence. Time is of the essence under this Agreement and all time limits set forth are mandatory and cannot be waived except by a lawfully authorized and executed written waiver by the Party excusing such timely performance.

Section 12. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Village, Catellus and their respective successors, assigns and/or transferees.

Section 13. No Waiver or Relinquishment of Right to Enforce Agreement. Failure of any Party to this Agreement to insist upon the strict and prompt performance of the terms, covenants, agreements and conditions herein contained, or any of them, upon any other Party imposed, shall not constitute or be construed as a waiver or relinquishment of any Party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

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Section 14. Section Headings and Subheadings. All section headings or other headings in this Agreement are for general aid of the reader and shall not limit the plain meaning or application of any of the provisions thereunder whether covered or relevant to such heading or not.

Section 15. Amendment. This Agreement sets forth all the promises, inducements, agreements, conditions and understandings between Catellus and the Village relative to the subject matter thereof, and there are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them, other than as herein set forth. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the Parties hereto unless authorized in accordance with law and reduced in writing and signed by them. However, whenever under the provisions of this Agreement any notice or consent of the Village or Catellus is required, or the Village or Catellus is required to agree or to take some action at the request of the other, such approval or such consent or such request shall be given for the Village, unless otherwise provided herein, by the Mayor or his designee and for Catellus by any officer or employee as Catellus so authorizes.

Section 16. Counterparts. This Agreement may be executed in two (2) or more counterparts each of which taken together, shall constitute one and the same instrument.

Section 17. Default. In the event of any default under or violation of this Agreement, the Party not in default or violation shall serve written notice upon the Party or Parties in default or violation, which notice shall be in writing and shall specify the particular violation or default. All Parties hereto reserve the right to cure any violation of this Agreement or default by any of them hereunder within thirty (30) days from written notice of such default.

Section 18. Severability. If any provision of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be deemed to be excised herefrom and the invalidity

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thereof shall not affect any of the other provisions contained herein.

Section 19. Integration. This Agreement together with all Exhibits thereto, constitutes the entire understanding and agreement of the Parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the Village or Catellus.

Property of Cook County Clerk's Office

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IN WITNESS WHEREOF, the Parties hereto have set their hands and seals as of the date and year first written above.

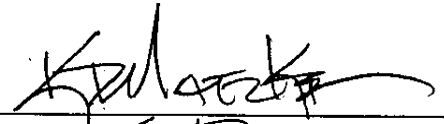
VILLAGE OF WOODRIDGE, an Illinois municipal corporation,

By:   
Mayor

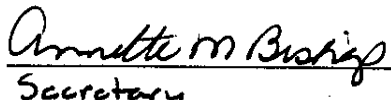
ATTEST:

  
Village Clerk

CATELLUS DEVELOPMENT CORPORATION, a Delaware corporation

By:   
S.V.P.

ATTEST:

  
Secretary

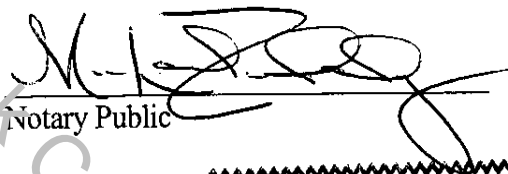
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# UNOFFICIAL COPY

STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF COOK         )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Kevin D. Matzke, Sr. Vice President, and Annette M. Bishop, Secretary of CATELLUS DEVELOPMENT CORPORATION, a Delaware corporation, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Sr. Vice President and Secretary, respectively appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth; and the said Secretary then and there acknowledged that she, as custodian of the corporate seal of said corporation, did affix the corporate seal of said corporation to said instrument, as her own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 21st day of August, 2003.

  
Notary Public



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**UNOFFICIAL COPY**

STATE OF ILLINOIS            )  
   ) SS.  
 COUNTY OF DU PAGE         )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that William F. Murphy, Jr., Mayor of the Village of Woodridge, and Eileene Nystrom, Village Clerk of said Village, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Mayor and Village Clerk, respectively appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said Village, for the uses and purposes therein set forth; and the said Village Clerk then and there acknowledged that she, as custodian of the corporate seal of the Village of Woodridge, did affix the corporate seal of said Village to said instrument, as her own free and voluntary act and as the free and voluntary act of said Village, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 25<sup>th</sup> day of September,  
 2003.

Amy R. Gleske  
 Notary Public

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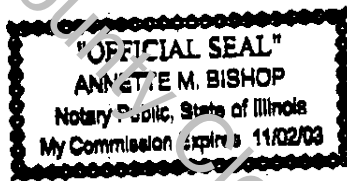
# UNOFFICIAL COPY

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF ~~DU PAGE~~ )  
Will

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Kevin D. Matzke of CATELLUS DEVELOPMENT CORPORATION, a Delaware corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Sr. VP, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth; and the said Kevin D. Matzke then and there acknowledged that he, as custodian of the corporate seal of said corporation, did affix the corporate seal of said corporation to said instrument, as his own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 21<sup>st</sup> day of August, 2003.

Annette M. Bishop  
Notary Public

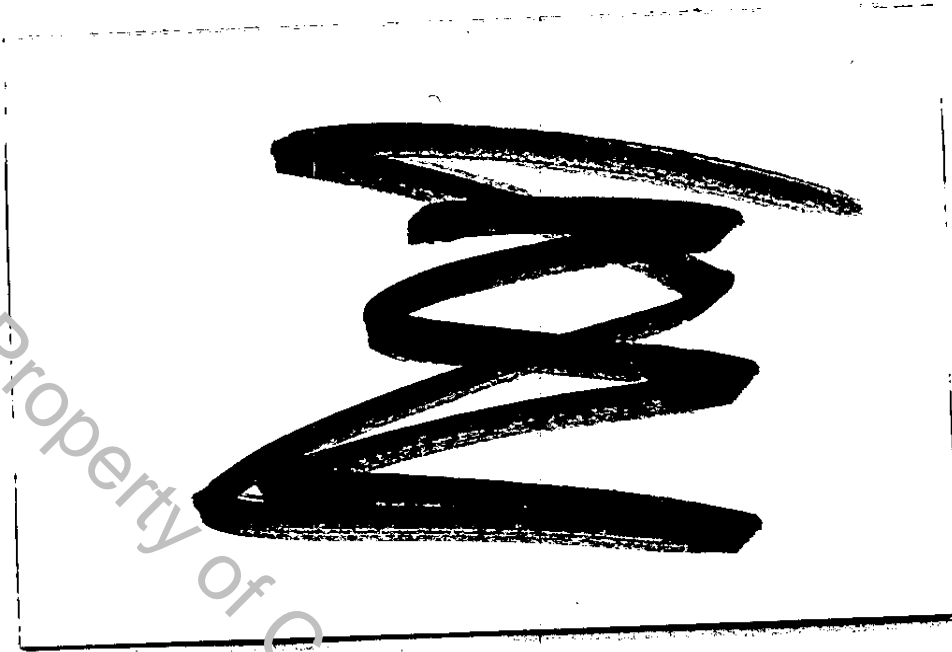


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## EXHIBIT "A"

### DESCRIPTION OF THE FACILITIES



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**UNOFFICIAL COPY****EXHIBIT****A****EXHIBIT A: Illinois American List of Facilities**

The Company ("Illinois American") owns and operates water and sewer production, distribution and treatment facilities generally located south of I-55, west of Lemont Road and north of the Des Plaines River.

The facilities include water and sewer mains and ancillary equipment such as valves, hydrants, manholes etc. located throughout the distribution and collection system. Major facilities are listed below:

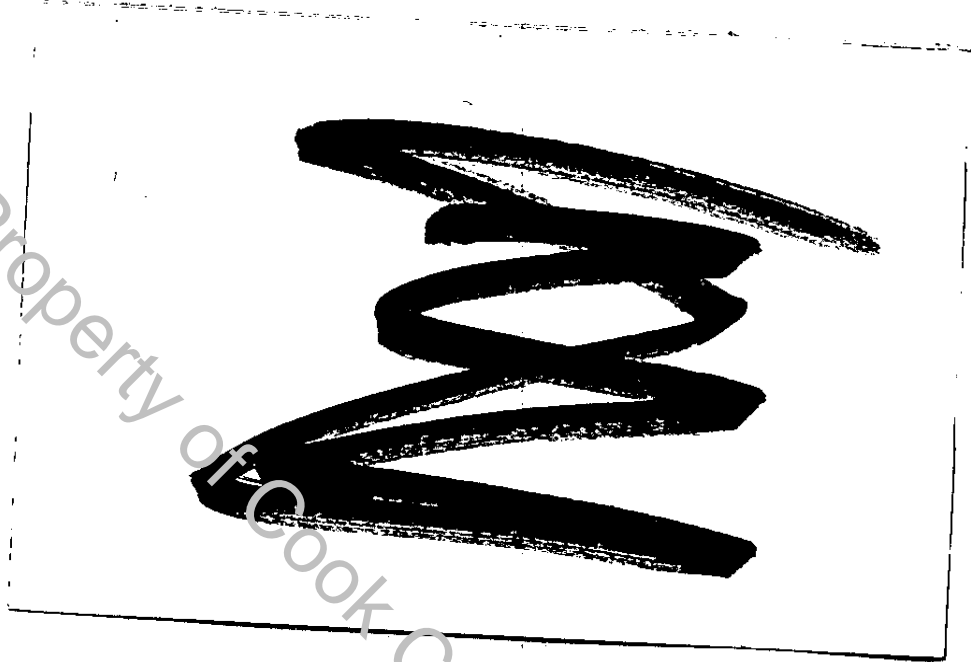
FACILITY NAME	DISTRICT	ADDRESS	VILLAGE
Santa Fe - Bluff Trails Lift Station (LS)	Santa Fe	Joliet Road & Sherman Road	Romeoville
Santa Fe - Davey Road LS	Santa Fe	17064 W. Davey Road	Woodridge
Santa Fe - Internationale Estates LS	Santa Fe	SEC of Naples Lane & Rothenberg Road	Woodridge
Santa Fe - LS for Water Reclamation Facility	Santa Fe	12W780 Internationale Parkway	Woodridge*
Santa Fe - Hindu Temple LS	Santa Fe	Bluff Road - West of Lemont Road	Lemont*
Santa Fe - Prudential LS	Santa Fe	Gibraltar & Joliet Roads	Bolingbrook
Santa Fe - Water Reclamation Facility	Santa Fe	12W780 Internationale Parkway	Woodridge*
Santa Fe - Well 1	Santa Fe	20W741 Frontage Road	Woodridge*
Santa Fe - Well 2	Santa Fe	11160 Joliet Road	Bolingbrook
Santa Fe - Tank A	Santa Fe	20W741 Frontage Road	Woodridge*
Notes			
* Unincorporated Area			

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EXHIBIT "B"

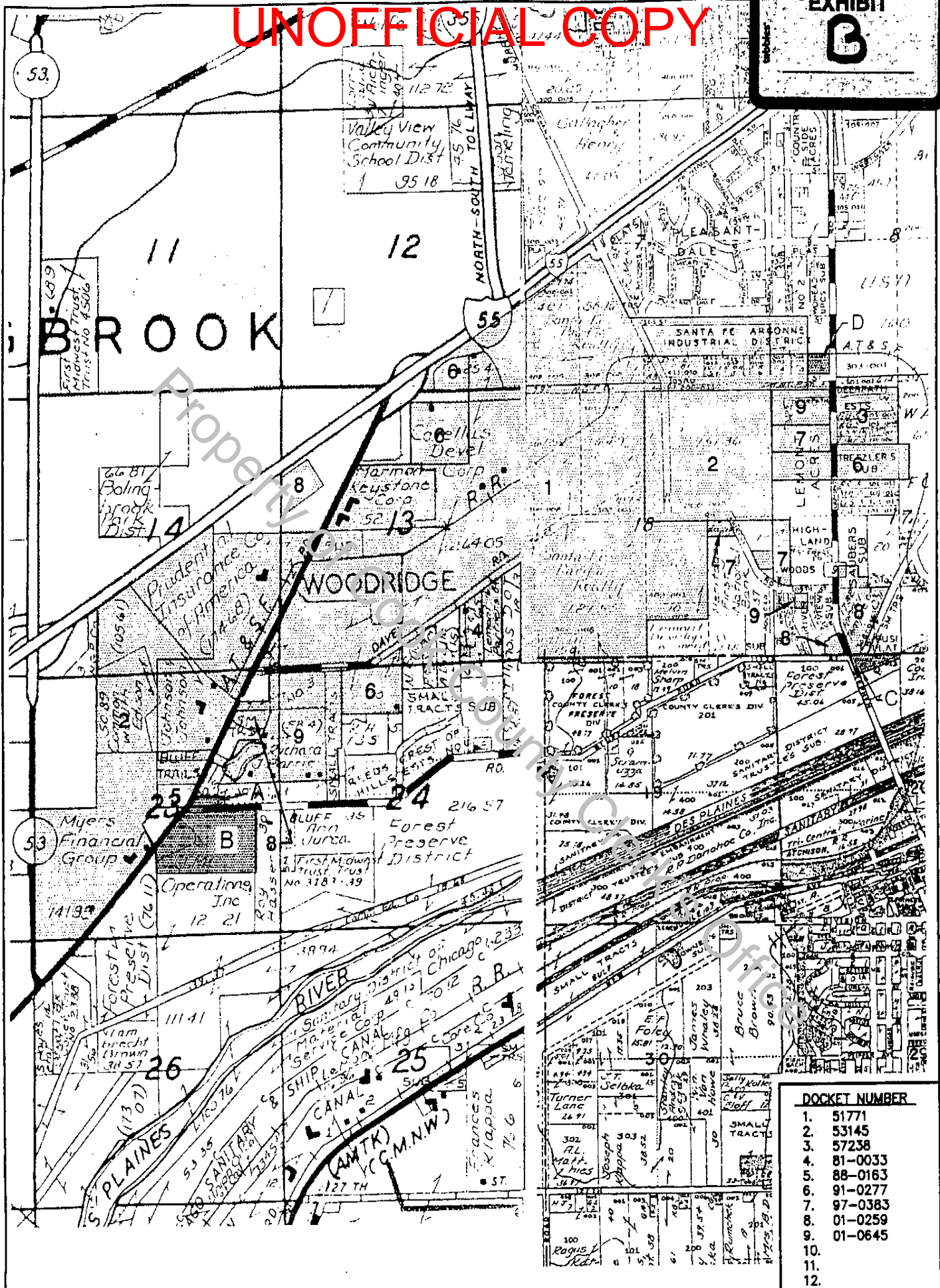
CERTIFICATED AREA



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EXHIBIT B



CERTIFICATED AREA  
SANTA FE

EXHIBIT A, PAGE 4 OF 7

REV. DATE:  
JUNE 2003  
TOWNSHIP: DUPAGE &  
DOWNERS GROVE  
COUNTY:  
DUPAGE, WILL & COOK

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## EXHIBIT "C"

### LIST OF USERS OF THE FACILITIES



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EXHIBIT

C

Sanitary Sewer Treatment Plant  
Santa Fe Certificated Area  
List of Users

	Building
1	AC Distributing
2	Acadia Polymers
3	Alter Group Warehouse
4	Arbor Ridge Subdivision
5	Argonne 55 - Phase II
6	Argonne Animal Hospital
7	Argonne\55 Dist. Center
8	BD Cylinder
9	Berner Warehouse & Office Bldg.
10	Boerman Moving & Storage
11	Bogard, Les
12	Bridgestone\Firestone
13	Bromberek School
14	Bruck Plastics
15	Bunzl Papercraft
16	Card Imaging
17	Central American South
18	Central American North
19	Champion Packaging
20	Chappel
21	Chicago Consolidated Distribution Corporation
22	Citizens Utilities
23	Clipper Express
24	ComEd & Turano Bakery
25	Concept Communications
26	Corporate Crossing Business Park
27	Corporate Crossing 1 & 2
28	Corporate Crossing 3
29	Corporate Crossing 4A
30	Corporate Crossing 5
31	Darien Gas Station
32	Don Dasbach
33	Dykerhodd & Wildman
34	ETW Corporation
35	Extreme Express (Flex Construction)
36	Folger Adam
37	Follett Educational Services
38	Fox Tool
39	GATX\Bobcat
40	Globe RE Development For Forest View Subdivision
41	Gooding Rubber
42	Gymnast Central
43	Harlem Furniture
44	Hindu Temple
45	Home Run Inn

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46	Internationale Estates Subdivision
47	Internationale Estates II Subdivision (Sal Rexhapi)
48	ITW Pancon
49	James River Paper Co.
50	John Amman Sons Co. - Argonne Woods Lot 5
51	KCM Packaging
52	LaGrou
53	Leads Construction
54	Lemont Fire Station
55	Loews Theater
56	2500 Internationale Parkway
57	2401 Internationale Parkway
58	2400 Internationale Parkway
59	2300 Internationale Parkway
60	Magnuson Group
61	Maple Point Business Park (Argonne Bridge and Nestle Waters)
62	Marmon Keystone
63	McDavid Kneeguard
64	McShane
65	Medichem Research
66	Midwest Warehouse
67	Missner (For Davey Road Project)
68	Morey Corporation
69	Norco Associates
70	Perlman & Rocque
71	Prairie Packaging
72	Robert Williams Plant
73	Russell Stanley Corp.
74	Spec A & B
75	Spec D
76	Spec F - Corporate Express
77	Spec G
78	Spec H
79	Storm Products
80	Trade Associates Group
81	Tensor
82	Tideman\FCL j.v.
83	TIP Development
84	Trammell Crow Corporate I
85	Trans Am. Corp. - Gillette Bldg. Centerpoint
86	Waterfall Glen Business Center
87	Wellness & Massage
88	Western ReMac (IHC Group)
89	Woodhill Crossings Business Park (Davey Bridge)
90	World Supply
91	Zoltek, Joe

**UNOFFICIAL COPY****EXHIBIT "D"****PURCHASE PRICE CALCULATION**

Woodridge Purchase Price (based on May 9, 2002 Catellus offer)	\$293,870
+ 50% of Nestle Waters deal	\$161,000
+50% of Forest View Subdivision deal	\$ 66,413
+100% of Bolingbrook deal (sale of 400 PE's)	\$ 450,000
-50% of sale of Capacity since 1/2002 (excluding Forest View)*	\$ (67,317)
<b>Purchase Price</b>	<b>\$903,966</b>
<b>Credits (assuming Catellus receives entire amount of recapture fee prior to Closing Date)</b>	
100% Nestle Waters deal	\$(322,000)
100% Forest View deal	\$(132,825)
<b>Purchase Price, adjusted</b>	<b>\$449,141</b>
* Internationale Estates II	\$69,000
Bograd	3,088
Landquest VIII	31,625
Dasbach	7,625
Chicago Consolidated	6,095
Davey Bridge (water)	11,500
Joe Zoltek	<u>5,700</u>
	134,633

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EXHIBIT "E"

CATELLUS CERTIFICATION

KDM

\_\_\_\_\_ of Catellus Development Corporation ("Catellus"), hereby certifies as follows: (a) Pursuant to the terms of the Agreement dated 8-21, 2003 (the "Agreement") between Catellus and the Village of Woodridge (the "Village") Catellus has transferred and assigned to the Village all of Catellus' right, title, interest, obligations, liabilities and responsibilities in the Facilities, the Capacity, the Existing Facilities Agreements and the Existing Service Agreements, as those terms are defined in the Agreement, (b) the Village has accepted the transfer and assignment and has agreed to perform Catellus' right, title, interest, obligations, liabilities and responsibilities thereunder pursuant to the terms of the Agreement dated 8-21, 2003 between the Village and Illinois-American Water Company ("Illinois-American"), and (c) Illinois-American is authorized to rely upon this Certification as a waiver by Catellus of any future claim of right under any of the Existing Facilities Agreements or the Existing Service Agreements and, henceforward, Illinois-American may deal with and recognize the Village as the exclusive owner of any right, title or interest previously held by Catellus for all purposes.

This certification shall not be binding upon Catellus until Illinois-American has executed the acknowledgment contained below.

CATELLUS DEVELOPMENT CORPORATION

Amatter Bishop

By: KDM

Its S.V.P.

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_, 2003

Illinois-American hereby consents to the assignment contemplated in this Agreement and approves the terms thereof. Accordingly, Catellus is released from its obligations under the Existing Facilities Agreements.

ILLINOIS-AMERICAN WATER COMPANY

By: Tony L. Hunt  
Its President

Date: August 21, 2003



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EXHIBIT "F"

INTERNATIONALE CENTRE MAP



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EXHIBIT  
**F**

