

**IN THE SUPERIOR COURT OF PICKENS COUNTY
STATE OF GEORGIA**

**BIG CANOE PROPERTY OWNERS)
ASSOCIATION, INC.)**

Plaintiff,)

v.)

**BIG CANOE UTILITIES COMPANY,)
INC.)**

Defendant.)

**CIVIL ACTION FILE
NO. 2018SLCV9**

VERIFIED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

NOW COMES Plaintiff Big Canoe Property Owners Association, Inc. (“Plaintiff” or the “Association”) and files this Verified Complaint and states as follows:

I.

THE PARTIES, VENUE & JURISDICTION

1. Plaintiff is a Georgia non-profit corporation with its principal place of business located at 10586 Big Canoe, 12 Wolfscratch Drive, Jasper, Pickens County, Georgia 30143.

2. Defendant Big Canoe Utilities Company, Inc. (“Defendant” or “BCU”) is a Georgia corporation with its principal place of business located at 10591 Big Canoe, 2 Wolfscratch Drive, Jasper, Pickens County, Georgia 30143. Process may be served on Defendant’s registered agent, William J. Byrne, or upon a managing agent at 10591 Big Canoe, 2 Wolfscratch Drive, Jasper, Georgia 30143.

3. Defendant is subject to the jurisdiction of this Court, and venue is proper in this Court pursuant to O.C.G.A. § 9-10-30, O.C.G.A. § 14-2-510, and Ga. Const. Art. VI § II, Para.

VI because Defendant is deemed a resident of Pickens County and the causes of action arise out of events occurring in Pickens County.

II.

FACTUAL ALLEGATIONS

The Big Canoe Water System

4. The Big Canoe community (“Big Canoe”) is a private mountain community with approximately 5,600 residents. The Big Canoe property includes approximately 8,000 acres located in Pickens and Dawson Counties, Georgia.

5. Plaintiff is the association of property owners within Big Canoe. All owners, by virtue of their ownership of property within Big Canoe, are members of the Association.

6. The Association’s purpose is to promote the health, safety, and welfare of the property owners within Big Canoe.

7. Residents of Big Canoe are served by a private water and sewer system (the “Water System”), which is operated by Defendant.

8. Defendant was formed by Big Canoe’s developer and Defendant’s predecessor-in-interest, Southeast Holding Company, Ltd. d/b/a Big Canoe Company, on or about April 21, 1987.

The Trust Deed

9. Pursuant to a November 29, 1984 Trust Deed¹, Defendant’s predecessor-in-interest transferred to the Association all rights, title, and interest in the Water System (the “Water System Property”), including:

¹ A true and correct copy of the Trust Deed is attached hereto as Exhibit 1.

- a. All rights, title, and interest in and to the real property set forth in Exhibit A to the Trust Deed (and as subsequently amended).
- b. The sewage collection system, including all appurtenances, such as manholes, pumping stations, etc., and the sewage treatment plant, including all easements incident to the ownership and operation of the sewage system.
- c. The well or wells, plant, chemical treatment facilities, storage and distribution facilities, including the water mains and lateral lines, including all easements incident to the ownership and operation of the Water System.

10. Under the Trust Deed, the Water System Property is held by the Association for the benefit of the present and future owners of properties connected to the Water System.

11. The Trust Deed provides that the Association shall hold the title to the Water System Property for this purpose until either: (a) the Water System is taken over by either a governmental authority or public utility for maintenance and operation, or (b) other adequate utility service is provided either by a governmental authority or public utility through means other than the operation of the utility and facilities transferred to the Association by the Trust Deed. Upon the happening of either of these events at a time when Defendant is still operating and managing the Water System in accordance with the terms of the Trust Deed, the Association shall immediately re-convey the Water System Property to Defendant, and the Trust Deed shall be of no further effect.

12. The Trust Deed also sets forth certain minimum service requirements Defendant must meet in its operation of the Water System. *See* Exhibit 1 at ¶ 2. Among other things, Defendant is required to “supply at all times and under adequate pressure for the use of each of the properties duly connected to the said utility system a sufficient quantity of potable water to meet the reasonable needs of each of the properties duly connected to said utility system.” *Id.*

Defendant must also “maintain said utility system at all times in good order and repair so that satisfactory service as aforesaid may be supplied to each of said properties as provided in Paragraph 2 above.” *Id.* at ¶ 3.

13. Following notice of the failures to properly operate and maintain the Water System and the failure to correct such deficiencies within 60 days, the Trust Deed provides that the Association shall take immediate possession of the Water System for the purpose of operating and maintaining the same and may transfer the Water System to a governmental authority.

14. In the event the Association takes possession of the Water System, Defendant has no further right, title, or interest in the Water System Property.

Defendant Provides Unsatisfactory Water and Sewer Service

15. Plaintiff believes that Defendant has not been, and is not presently, operating the Water System in compliance with the Trust Deed.

16. Defendant currently contracts with a private water service provider, Suez North America, to manage the Water System. For a number of years, the service provided by Defendant and Suez North America has been deficient and has failed to meet the standards set out in the Trust Deed.

17. The Water System has suffered from repeated outages, poor pressure, leaks, and other operational issues.

18. By way of example, in 2016, a break in a large line resulted in the draining of three tanks, which set off a low level alarm. Defendant ignored the alarm and two pumps ran for two days before Defendant took notice, resulting in a massive failure at the pump station. One

pump was burned beyond repair, and a second was severely damage. “Run Dry Cutoff Switches” were found in the pump station building, but the switches had never been installed. A replacement pump was ordered, but it did not arrive for approximately four months. As a result of this failure to maintain the Water System, approximately 580 homes and 2,000 individuals were without water for periods of 5-8 days.

19. In September 2017 there was another massive outage that affected over half of the community, which lasted for nearly a week due to the failure of Defendant to have back-up electric generators as required by the Georgia Environmental Protection Division (“EPD”).

20. On November 24, 2017, the day after Thanksgiving, multiple pressure valves had to be replaced, resulting in a complete outage of service for a large portion of Big Canoe for several hours, all due to BCU’s failure to properly maintain the Water System.

21. Due to Defendant’s failure to properly maintain and operate the Water System, the Water System has historically experienced roughly 22 or more leaks per year in the major piping distribution system while an adjacent private community has experienced just 4-6 leaks per year.

22. Plaintiff has requested that Defendant permit the Association’s consultant engineer to inspect the Water System to evaluate whether Defendant is operating and maintaining the Water System in accord with the requirements of the Trust Deed and applicable EPD rules, but Defendant has refused.²

² A true and correct copy of the Association’s counsel’s November 17, 2017 letter to counsel for BCU requesting access to the Water System Property is attached hereto as Exhibit 2. A true and correct copy of BCU’s counsel’s November 30, 2017 letter to the Association’s counsel denying access to the Water System Property is attached hereto as Exhibit 3.

23. In addition to the Trust Deed, on May 31, 2012, the Association, Defendant and Bank of America, N.A. entered into a Tri-Party Agreement to facilitate a loan to Defendant for the purposes of improving the Water System.³ Under the Tri-Party Agreement, Defendant agreed “to annually provide to the [Association] and the Lender, at [Defendant’s] expense and within 60 days of each fiscal year end, evidence reasonably satisfactory to the [Association] and Lender and in the form of a certificate from a circuit rider certified by the National Rural Water Association or a qualified engineer, that [Defendant’s] water and sewer system is in good working order and condition.” Exhibit 4 at ¶ 3. Defendant has never provided such a certificate to the Association, and, upon information, Defendant has never provided such a certificate to the Lender.

24. The Association holds the Water System Property as trustee for the benefit of the Big Canoe property owners. As trustee, the POA has the responsibility to monitor whether Defendant is meeting its obligations under the Trust Deed, including supplying at all times and under adequate pressure a sufficient quantity of potable water to meet the needs of each property and to properly operate and maintain the system for the benefit of the present and future property owners.

25. Defendant’s refusal to permit an inspection is prohibiting Plaintiff from carrying out its duties and exercising its rights under the Trust Deed. In particular, Defendant is intentionally impeding the Association’s right to notify Defendant that it has 60 days to correct its failure to properly operate and manage the Water System.

³ A true and correct copy of the Tri-Party Agreement is attached hereto as Exhibit 4.

III.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION: MANDATORY INJUNCTION

26. Plaintiff repeats and restates paragraphs 1 through 25 as if fully set forth herein.
27. Plaintiff seeks a mandatory injunction requiring Defendant to permit Plaintiff and its representatives to inspect the Water System to determine whether Defendant is operating the Water System in conformance with the Trust Deed and EPD regulations and to provide Plaintiff with all documents relating to the operation, maintenance and financial condition of the Water System.
28. Injunctive relief is expressly permitted pursuant to O.C.G.A. §§ 9-4-3 and 9-5-1, *et seq.*
29. Under the Trust Deed, the Association holds title to the Water System Property in trust for the benefit of its member property owners.
30. The Trust Deed provides that Defendant must operate the Water System in accordance with certain terms and conditions. Among other things, the Trust Deed requires that the Defendant “maintain said utility system at all times in good order and repair so that satisfactory services as aforesaid may be supplied.” Exhibit 1 at ¶ 3.
31. In furtherance of its rights and obligations under the Trust Deed, Plaintiff has requested that Defendant permit Plaintiff and its consultant engineer to inspect the Water System to determine whether Defendant is in breach of the Trust Deed and whether Plaintiff should exercise its rights to take over the Water System for the benefit of its members.
32. Defendant has denied Plaintiff’s request.

33. The Association and its member property owners will suffer irreparable injury if injunctive relief is not granted because Plaintiff 's rights and obligations under the Trust Deed will be impaired, and Defendant will continue to fail to operate the Water System in the manner required by the Trust Deed.

34. The threatened injury to the Association outweighs any threat of harm to the Defendant. In fact, Defendant will experience no harm if the injunction is granted.

35. The granting of this injunction will serve the public interest because it will permit the Association to fully evaluate whether to assert its rights under the Trust Deed, carry out its duties under the Trust Deed for the benefit of its member property owners and, most importantly, to ensure the provision of adequate and proper water service to the property owners in Big Canoe

SECOND CAUSE OF ACTION: DECLARATORY JUDGMENT

36. Plaintiff repeats and restates paragraphs 1 through 35 as if fully set forth herein.

37. Plaintiff's claims against Defendant arise pursuant to the Georgia Declaratory Judgment Act, O.C.G.A. § 9-4-1, *et seq.*

38. Plaintiff seeks a declaratory judgment that under the Trust Deed, Defendant is required to permit Plaintiff and its representatives to inspect the Water System to determine whether Defendant is operating the Water System in compliance with the Trust Deed and EPD regulations and to provide Plaintiff with all documents relating to the operation, maintenance and financial condition of the Water System.

39. A substantial, justiciable, and actual controversy exists between Plaintiff and Defendant regarding their rights under the Trust Deed.

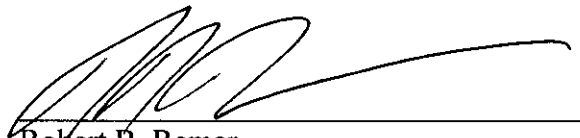
40. Plaintiff is currently insecure and uncertain as to its rights, interests, status, and legal relations due to Defendant's conduct and express statements and desires an early adjudication of those rights by declaratory judgment pursuant to O.C.G.A. § 9-4-1, *et seq.*, so that it will not be hindered in its ability to exercise its rights and fulfill its obligations under the Trust Deed.

PRAYER FOR RELIEF

41. WHEREFORE, Plaintiff demands judgment against Defendant and in favor of Plaintiff as follows:

- (a) That the Court enter a mandatory injunction requiring Defendant to permit Plaintiff and its representatives access to inspect the Water System and to provide Plaintiff with all documents relating to the operation, maintenance and financial condition of the Water System;
- (b) That the Court enter a declaratory judgment that under the Trust Deed, Defendant must permit Plaintiff and its representatives access to inspect the Water System and to provide Plaintiff with all documents relating to the operation, maintenance and financial condition of the Water System;
- (c) Award Plaintiff its reasonable attorney fees, expenses of litigation, and costs; and
- (d) Award Plaintiff such other and further relief as the Court deems just and proper.

This 11th day of January, 2018.



Robert B. Remar
Georgia Bar No: 600575
Austin J. Hemmer
Georgia Bar No: 563104

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Will H. Pickett, Jr. by RBR with
express permission

Attorneys for Plaintiff

EXHIBIT 1

TRUST DEED

5810

THIS TRUST DEED, made this 29th day of November, 1984, by and between SOUTHEAST HOLDING COMPANY, LTD., a South Carolina corporation, d/b/a Big Canoe Company (hereinafter called "GRANTOR" or "PARTY OF THE FIRST PART"), and BIG CANOE PROPERTY OWNERS ASSOCIATION, INC., TRUSTEE, a corporation duly chartered, organized and existing under and by the virtue of the laws of the State of Georgia (hereinafter called "TRUSTEE" or "PARTY OF THE SECOND PART").

WITNESSETH:

THAT WHEREAS, Grantor, is now the owner of property known as Big Canoe, Counties of Pickens and Dawson, State of Georgia, which property is being improved and developed by the construction of dwellings thereon; and

WHEREAS, Grantor is the owner of certain property, upon which there is located (1) a well or wells and/or a water treatment plant, together with distribution facilities, and/or (2) a sewage system including sanitary sewers and appurtenances together with a sewage treatment plant, individually or collectively hereinafter referred to as "the utility system" for the purpose of supplying adequate water and/or sewer service to all properties connected to or to be connected to the utility system; and

WHEREAS, the Georgia Department of Natural Resources (DNR) Environmental Protection Division (EPD) (hereinafter the "Division"), will not permit the operation of said utility system without assurance of continuity of maintenance and operation, as provided by DNR Rules 391-3-5-.04(3) and 391-3-6-.06(13), among other written requirements; and

WHEREAS, it is the intention and purpose of the Grantor that such utility system shall be used and operated to provide adequate disposal of sewage and an adequate supply of water for each of the properties connected thereto, regardless of the ownership of the individual properties, and properly to maintain the utility system to assure the continuance of the operation and maintenance of said system for the benefit of the present and future owners of the properties connected thereto.

NOW, THEREFORE, for and in consideration of the undertakings of the Grantor to provide and assure the maintenance and operation of the utility system as aforesaid and the further sum of One Dollar (\$1.00) lawful money of the United States cash in hand to Grantor does hereby grant and convey to the party of the second part, as Trustee, the following property, to-wit:

- (a) All the rights, title and interest in and to the following described real property as set forth in Exhibit "A" which is attached hereto and made a part hereof.
- (b) The sewage collection system including all appurtenances such as manholes, pumping stations, etc. and the sewage treatment plant including effluent line to point of final disposal, heretofore constructed or to be constructed, including all easements incident to the ownership and operation of said sewage system.
- (c) The well or wells, plant, chemical treatment facilities, storage and distribution facilities, including the water mains and lateral lines, heretofore constructed or to be constructed, including all easements incident to the ownership and operation of said water system.

Further, the Grantor hereby warrants that there are no existing encumbrances, liens, or other indebtedness to the title of the utility system conveyed hereunder, other than those set out in Exhibit "B" which is attached hereto and made a part hereof.

Grantor further warrants that the said encumbrances, liens, or indebtedness (if any) have been subordinated to this conveyance and are subject to this Trust Deed.

GEORGIA, DAWSON COUNTY
CLERK'S OFFICE, SUPERIOR COURT
FILED FOR RECORD
at 8:30 A.M. DEU 27 1984

Recorded in Book 77 Page 439-446
this 27 day of Dec. 1984
Ralph Maddox
RALPH MADDOX, CLERK

FOR TRUST DEED BOOK 77 PAGE 439-446

876-122-1109
T. J. ...

This conveyance is upon the trusts and for the purposes following,
to-wit:

1. This grant is for the benefit of the present and future owners of all and each of the properties now or hereafter connected to the said utility system, as well as the holders of the mortgages covering each of the said properties; and Trustee shall hold the title to the property granted by this Trust Deed until either (a) the utility system is taken over by either a governmental authority or public utility for maintenance and operation, or (b) other adequate utility service is provided either by a governmental authority or public utility through means other than the operation of the utility and facilities now transferred to the Trustee herein. Upon the happening of either of such events at a time when the Grantor is still operating and managing the utility system in accordance with the terms and provisions hereof, the Trustee shall immediately reconvey the property to the Grantor, its successors or assigns, and this Trust Deed shall be of no further effect.

2. The Grantor shall supply at all times and under adequate pressure for the use of each of the properties duly connected to the said utility system, a sufficient quantity of potable water to meet the reasonable needs of each of the properties duly connected to said utility system. Such water shall be of the quality and purity as shall meet the Georgia Safe Drinking Water Act of 1977, as amended, and the Rules, Chapter 391-3-5 adopted under the Act, so as to produce water without excessive hardness, corrosive properties, or other objectional characteristics making it unsafe or unsuitable for domestic use or harmful to any or all pipes within and/or without the dwellings. In addition, the Grantor agrees to provide at all times, for each of the properties connected to the said utility system, service adequate for the safe and sanitary collection, treatment, and disposal of all domestic sewage from said dwellings, in accordance with the 1972 Federal Water Pollution Act, as amended, of the U.S. Environmental Protection Agency (EPA), and the Georgia Water Quality Control Act, as amended, and the Rules, Chapter 391-3-6- adopted under the Act. The Grantor further shall operate and maintain the utility system so as not to pollute the ground, air or water in, under or around said properties with improperly or inadequately treated sewage, or with noxious or offensive gases or odors. The Grantor further agrees to operate the utility system in accordance with the requirements of the Division, to produce a treated wastewater effluent of a quality satisfactory to the Division. Records of any and all tests conducted in connection with said utility system shall be kept by the Grantor, as required by the Division, and said records shall be open to inspection by the Division and the owners of the properties connected to the said utility system. The Division shall at all times have access to the utility plants of the Grantor to conduct any and all tests as the Division shall consider necessary to determine compliance with the said requirements. In any event, the Grantor shall conduct all tests required by operating permits issued by the Division and shall pay all costs in connection therewith. In the event the Division shall determine that the operation of the utility system does not meet all applicable requirements, the Grantor shall, with reasonable dispatch at its sole cost make any adjustment, repair, installation, or improvement that shall be necessary or recommended by the Division to bring the operation of the utility system up to said requirements.

3. The Grantor shall maintain said utility system at all times in good order and repair so that satisfactory service as aforesaid may be supplied to each of said properties as provided in paragraph 2 above.

4. Until the happening of one of the events set forth under paragraph numbered 1 above: Should Grantor fail to operate and manage the utility system in the manner and under the conditions specified in paragraphs numbered 2 and 3 above and should Grantor fail, after sixty (60) days prior written notice in writing from the Trustee to correct such failure with reasonable dispatch, then Trustee shall take immediate possession of the utility system for the purpose of operating and maintaining the same, and shall hold, use, operate, manage, and control the same either itself or by or through any of the agencies or parties for whose benefit this trust is created and it shall take possession thereof for the purpose of operating the same, and in that event, the Trustee or the entity operating the utility system in its behalf or in the behalf of any of the beneficiaries of this trust, shall

be subrogated all rights of the Grantor to levy and collect a charge against each customer.

5. In the event the Trustee takes possession of the utility system pursuant to the provisions of paragraph numbered 4, the Grantor shall have no further right, title or interest in the utility system or other property granted by this Trust Deed and shall not be entitled to any portion of the proceeds resulting from any sale of such utility system or property; but the Trustee shall have the right to transfer such utility system to a governmental authority upon such terms or conditions as may be approved by the Trustee and the owner or owners of a majority of the properties connected to the utility system.

6. The Grantor reserves the right to levy and collect a charge for utility services provided to the occupants of each of the properties connected to the utility system. Services shall be charged on a prorata basis from the date the services are established at the request of a customer, to the date of its discontinuance. In connection with the foregoing, the Grantor shall have the right to install, on each of the individual properties, a water meter to be maintained by the Grantor, through which all water supplied to the consumer or consumers shall pass and to which the Grantor shall have access at reasonable times for the purpose of taking meter readings and keep said meter in repair.

7. If it should become necessary at any future time for the Trustee or any entity acting in its behalf or any beneficiary under this Trust Deed, to take over, operate, and manage the utility system under the provisions of this trust, then and in that event, the operator of such systems shall be entitled to a Trustee's fee payable from the income of the utility system at a rate not in excess of fifteen (15) percent of the gross charges collected by such Trustee, provided that such Trustee's fee may be increased with the approval of the owner or owners of seventy-five (75) percent of the properties connected to the said utility system.

8. Should the Trustee or any entity acting in its behalf or any beneficiary under this Trust Deed, take over, operate and manage the utility system under the provisions of this trust, the Trustee shall notify the Division within thirty (30) days of such take over and shall meet all the requirements of the Grantor's permits issued by the Division.

9. If the Trustee named herein shall cease to serve as Trustee before the termination of this Trust Deed, then a successor Trustee may be selected by the Grantor with the approval of a majority of the beneficiaries. To assure the continuity of the maintenance and operation of the water system, approval of the successor Trustee shall also be obtained from the Director of the Division, but this must occur prior to the release of the first Trustee. If a majority of the beneficiaries or the Director are unable to agree on the appointment of a successor Trustee within a reasonable time, either the Grantor or beneficiaries may petition any Court to select and appoint such successor Trustee.

10. Whenever the word "Grantor" occurs herein, it shall also include its successors and assigns; and whenever the word "Trustee" occurs herein, it shall include the successor Trustee and successors and assigns.

The Grantor warrants that all property described in "a" (above) as well as all equipment, materials, tools, appurtenances, etc. associated with normal daily operation and maintenance of the utility system hereafter acquired by the Grantor shall be made subject to this Trust Deed by recordation of appropriate covenants, reservations, restrictions, or conditions in such a manner as is required by Georgia law to put all persons on notice that such properties have been subject to the terms of this Trust Deed.

IN TESTIMONY WHEREOF, SOUTHEAST HOLDING COMPANY, LTD., d/b/a BIG CANOE COMPANY, the Grantor, has caused these presents to be executed in its behalf by Wesley L. Hopkins, its President and its corporate seal to be hereunto affixed and attested by J. Michael McShane its Asst. Secretary and the Trustee herein named, has caused these presents to be executed by E. J. C. Kainwright its Vice President, and its corporate seal to be

affixed and attested by Deborah H. Pickett, the day and year first hereinabove written. In entering into the agreement contained herein and executing this Trust Deed, BIG CANOE PROPERTY OWNERS ASSOCIATION, INC. acts for itself as Trustee and as Representative of any by authority of all persons, firms, corporations, or entities which are or may be beneficiaries under the trust hereby created.

Signed, sealed and delivered
in the presence of:

Gregory A. McNeil
Witness

Christina S. White
Notary Public, Georgia, State at Large
My Commission Expires July 6, 1997
(NOTARY SEAL)
(NOTARY STAMP)

Signed, sealed and delivered
in the presence of:

Gregory A. McNeil
Witness

Christina S. White
Notary Public, Georgia, State at Large
My Commission Expires July 6, 1997
(NOTARY SEAL)
(NOTARY STAMP)

SOUTHEAST HOLDING COMPANY, LTD.,
D/B/A BIG CANOE COMPANY

By: [Signature]
Title: President
Attest: [Signature]
Title: Asst. Secretary

[CORPORATE SEAL]

BIG CANOE PROPERTY OWNERS
ASSOCIATION, INC., AS TRUSTEE

By: [Signature]
Title: Vice President
Attest: [Signature]
Title: Secretary

[CORPORATE SEAL]

When recorded return to:
A. James Elliott
Alston & Bird
Suite 4000
1201 West Peachtree St.
Atlanta, Georgia 30309-3424

PICKENS COUNTY FILED FOR RECORD ON
THE 1 DAY OF SEPT. 1995 1:20P
RECORDED THIS 22 DAY OF SEPT. 1995
JOYCE CANTRELL, CEC, BOOK NO. 281, PAGE 280

FIRST AMENDMENT TO TRUST DEED

THIS AMENDMENT entered into this 1st day of September 1995, and between BIG CANOE UTILITIES COMPANY, INC., a Georgia corporation (hereinafter called "Grantor"), and BIG CANOE PROPERTY OWNERS ASSOCIATION, INC., a corporation duly organized under the laws of the State of Georgia (hereinafter called "Trustee").

Statement of Background

A. Southeast Holding Company, Ltd., as Grantor, and Trustee, as trustee, entered into that certain Trust Deed dated November 29, 1984, recorded in Deed Book 103, pages 210-219, Pickens County, Georgia records, and in Deed Book 77, page 437, Dawson County, Georgia records (the "Trust Deed"), as required by regulations of the State of Georgia.

B. Grantor is the successor in interest to Southeast Holding Company, Ltd.

C. Grantor and Trustee are desirous of amending the Trust Deed to authorize the borrowing of money for certain specific purposes in order to give effect to the purposes of the Trust Deed and to add additional property.

Statement of Agreement

NOW, THEREFORE, in consideration of the covenants contained herein, Grantor and Trustee covenant and agree as follows:

1. A new paragraph 11 is added to the Trust Deed as follows:

"The Trustee may borrow money and be obligated to repay and/or assume or take subject to existing financing (including, without limitation, deeds to secure debt, mortgages, security agreements, loan agreements and other agreements), and may enter into equipment and other leases, all upon such terms and conditions as shall be acceptable to the Trustee, for the purpose of purchasing, expanding, renovating, updating, improving, maintaining and/or operating the utility system, and the Trustee may pledge or otherwise encumber (by means of deeds to secure debt, mortgages, security agreements, loan agreements and other agreements) the utility system, all fees and user and service charges and/or any other property of the Trustee as trustee hereunder to secure any such loan, leasing or financing."

2. A new paragraph 12 is added to the Trust Deed as follows:

"The Trustee may enter into one or more leases, upon such terms and conditions as shall be acceptable to the Trustee, in order to lease the utility system and/or any other

property of the Trustee as trustee hereunder to the Grantor, its successors and/or assigns or, if Grantor, its successors and/or assigns are at such time no longer entitled or required to operate the utility system, to any other person or entity, for the purpose of operating and maintaining the utility system and collecting fees and user and service charges in connection with such operation and maintenance."

3. The property conveyed to Trustee by the Trust Deed is hereby amended to include that shown on Exhibit A-1 attached hereto and made a part hereof, which property Grantor does hereby grant, bargain and sell to Trustee, subject to the terms of the Trust Deed.

4. A new paragraph 13 is added to the Trust Deed as follows:

"Grantor and Trustee, upon the request of the other, shall execute, acknowledge, deliver and record such further instruments and do such further acts as may be necessary, desirable or proper to carry out the purposes of this Trust Deed and Grantor shall convey to Trustee any renewals, additions, substitutions, replacements, improvements or appurtenances to the property."

5. A new paragraph 14 is added to the Trust Deed as follows:

"The Trustee may form or cause to be formed subsidiary or other affiliated corporations, and may transfer assets which it may hold from time to time as Trustee hereunder, to such corporation if Trustee is of the opinion that such subsidiary or affiliate corporations are appropriate for Trustee to carry out its obligations as Trustee hereunder."

6. Except as specifically modified herein, the terms and conditions of the Trust Deed remain in full force and effect.

IN WITNESS WHEREOF, Grantor and Grantee have caused this First Amendment to Trust Deed to be executed as of the date first above written.

Signed, Sealed and Delivered
in the Presence of:

BIG CANOE UTILITIES COMPANY, INC.
a Georgia corporation

(Witness)

By:

Name: William J. Byrne
Title: PRESIDENT

(Notary Public)

Attest:

Name: Nancy G. Gek
Title: Vice President

(NOTARY SEAL)

[CORPORATE SEAL]

(Signatures continued on next page)

Signed, sealed and delivered
in the presence of:

BIG CANOE PROPERTY OWNERS
ASSOCIATION, INC., a Georgia corporation

[Signature]
Witness
Susan L. Wright
Notary Public

By: [Signature]
Name: James D. Hancock
Title: President

My Commission expires:
Notary Public, State of Georgia,
My Commission Expires June 18, 1996

Attest: Walter B. Elcock, Jr.
Name: WALTER B. ELCOCK, JR.
Title: Secretary

(NOTARY SEAL)

(CORPORATE SEAL)



EXHIBIT "A"
Page 1 of 2

TRACT I:

All right, title and interest in and to the property described in that certain Trust Deed from Southeast Holding Company, Ltd. to Big Canoe Property Owners Association, Inc., Trustee, dated November 29, 1984, recorded December 27, 1984, in Deed Book 103, Page 210, Pickens County, Georgia Records, and in Deed book 77, page 437, Dawson County, Georgia Records, together with all reversionary rights and all other rights and obligations reserved or set forth therein.

TRACT II:

Utilities Easement

An easement (the "Utilities Easement") over, across, under and through all or any portion of the subject Property (as described in the Limited Warranty Deed of Southeast Holding Company, Ltd. dated December 31, 1985 - the "Property") to tap onto, use, inspect, maintain, repair, operate, and extend any and all utility lines, poles, wires, pipes, transformers, and other facilities necessary or appropriate to the transmission, distribution, flow and delivery of electric current, water, telephone communications, cable television, gas, storm sewage, and sanitary sewage that may now or hereafter exist over, under, across or through the subject Property, together with the right to construct, use, inspect, maintain, repair, operate and extend additional such facilities over, under, across and through the subject Property.

Water Easement

An easement (the "Water Easement") over, across, under and through all or any portion of the subject Property (a) to locate, maintain, repair, remodel, improve, and replace wells, pumping stations, water treatment facilities, irrigation facilities, water storage tanks, and other similar equipment and facilities for the drawing, treatment, storage, and transportation of water; (b) to draw, remove, transport, store, treat and sell any and all water now or hereafter located in any and all lakes and streams now or hereafter located on the subject Property for the purpose of using said water as drinking water, for irrigation, or any other use whatsoever, including without limitation, the right to sell any and all such water for a profit and to keep all proceeds of sales; (c) to discharge treated waste water into any and all lakes and streams now or hereafter located on the subject Property; and (d) to locate, construct, operate, maintain, repair, improve, remodel, and replace facilities for the drainage, retention, discharge, or treatment of surface waters on the subject Property.

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EXHIBIT "A"
Page 2 of 2

TRACT III:

Water Plant Site

ALL THAT TRACT or parcel of land lying and being in Land Lots 15, 16, 23 and 24 of the 4th District, 2nd Section, Pickens County, Georgia, as shown on a Compiled Plat prepared by Cranston, Robertson & Whitehurst, P.C. dated October 18, 1993, and being more particularly described as follows:

TO FIND THE POINT OF BEGINNING commence at the intersection of Land Lots 15, 16, 23 and 24 of the 4th District, 2nd Section, Pickens County, Georgia; thence North 56 degrees 17 minutes 31 seconds West 360.77 feet to a point located on the North right-of-way line of Wolfscratch Drive (a 60 foot right-of-way) which point is the POINT OF BEGINNING; thence leaving said right-of-way line of Wolfscratch Drive and running North 69 degrees 00 minutes 43 seconds East 144.35 feet to a point which is the Southwest corner of lands now or formerly of Standard Telephone Company; thence along the South line of the lands of Standard Telephone Company South 65 degrees 21 minutes 04 seconds East 204.46 feet to a point located on the North right-of-way line of Wolfscratch Drive (a 60 foot right-of-way); thence continuing along said right-of-way line of Wolfscratch Drive which forms the arc of a curve to the left (which arc has a radius of 230.81 feet and is subtended by a chord bearing South 06 degrees 14 minutes 04 seconds West for a distance of 71.71 feet) 72.00 feet to a point of compound curvature; thence along said right-of-way line which forms the arc of a curve to the left (which arc has a radius of 271.17 feet) 137.37 feet to a point of tangency; thence along said right-of-way line South 31 degrees 43 minutes 35 seconds East 129.00 feet to a point of curvature; thence along said right-of-way line which forms the arc of a curve to the right (which arc has a radius of 6.13 feet) 13.77 feet to a point of tangency; thence along said right-of-way line North 83 degrees 00 minutes 25 seconds West 173.00 feet to a point of curvature; thence along said right-of-way line which forms the arc of a curve to the right (which arc has a radius of 203.31 feet) 220.07 feet to a point of tangency; thence along said right-of-way line North 20 degrees 59 minutes 15 seconds West 218.13 feet to a point which is the POINT OF BEGINNING.

Said plat encompasses 2.20 acres and was filed for record October 26, 1993, and recorded October 26, 1993, in Plat Book V, Page 211, Pickens County, Georgia Records.

AFTER RECORDING, RETURN TO
MUGEE & OXFORD
105 NORTH MAIN STREET
SUITE 3
JASPER, GA 30143

Prepared by and return to:
Eric Wilensky, Esq.
Morris, Manning & Martin, LLP
1600 Atlanta Financial Center
3343 Peachtree Road, N.E.
Atlanta, Georgia 30326

PICKENS COUNTY FILED FOR RECORD ON
THE 17th DAY OF March 2005
12:10P M. RECORDED THIS 17th DAY OF
March 2005 BOOK NO. 236 PAGE 200-234
GAIL BROWN CSC

Cross Reference Trust Deed Book
103, Page 210, Deed Book 241,
Page 480, Pickens County, Georgia,
Records and Deed Book 77, Page
437, Deed Book 204, Page 357,
Dawson County, Georgia, Records

[Space Above this Line For Recording Data]

SECOND AMENDMENT TO TRUST DEED

THIS SECOND AMENDMENT ("Amendment") entered into this 3rd day of March 2005, and between BIG CANOE UTILITIES COMPANY, INC., a Georgia corporation (hereinafter called "Grantor"), and BIG CANOE PROPERTY OWNERS ASSOCIATION, INC. a corporation duly organized under the laws of the State of Georgia (hereinafter called "Trustee").

Statement of Background

A. Southeast Holding Company, Ltd., as Grantor, and Trustee, as trustee, entered into that certain Trust Deed dated November 29, 1984, recorded in Deed Book 103, pages 210-219, Pickens County, Georgia records, and in Deed Book 77, page 437, Dawson County, Georgia records as amended by that certain First Amendment to Trust Deed, dated September 1, 1995, and recorded in Deed Book 241, Page 480, Pickens County, Georgia records, and in Deed Book 204, Page 357, Dawson County, Georgia records (hereinafter collectively referred to as the "Trust Deed"), as required by regulations of the State of Georgia.

B. Grantor is the successor in interest to Southeast Holding Company, Ltd.

C. Grantor and Trustee are desirous of amending the Trust Deed for purposes of amending the property conveyed thereby and for purposes of adding additional property thereto.

Statement of Agreement

NOW, THEREFORE, in consideration of the covenants contained herein, Grantor and Trustee covenant and agree as follows:

1. Exhibit "A" to the Trust Deed is hereby amended by deleting Tract II in entirety, and in lieu thereof, replacing it with Tract II as described more particularly in Exhibit "A-1" attached hereto and made a part hereof, which appurtenances Grantor does hereby grant, bargain and sell to Trustee, subject to the terms of the Trust Deed.
2. Exhibit "A" to the Trust Deed is hereby amended to include that shown on Exhibit "A-2" attached hereto and made a part hereof, which property Grantor does hereby grant, bargain and sell to Trustee, subject to the terms of the Trust Deed.
3. Except as expressly modified hereby, the Trust Deed shall remain unamended and in full force and effect and is hereby ratified and confirmed by the parties hereto.
4. This Amendment may be executed in multiple counterparts, but all such counterparts shall constitute but one original.

[SIGNATURES ON FOLLOWING PAGE]


-2-#1246448 v1 - Big Canoe: 2nd Amendment to

Tr

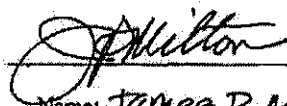
IN WITNESS WHEREOF, Grantor and Trustee have caused this Second Amendment to be executed as of the date first above written.

Signed, sealed and delivered
In the presence of:

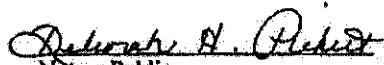
BIG CANOE PROPERTY OWNERS
ASSOCIATION, INC., a Georgia corporation



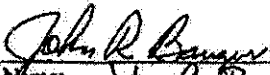
Witness

By: 

Name: JAMES P. MILTON
Title: President



Notary Public
My Comm. Expires
11/9/08

Attest: 

Name: John R. Bangs
Title: Secretary



(CORPORATE SEAL)



[SIGNATURES CONTINUED ON FOLLOWING PAGE]

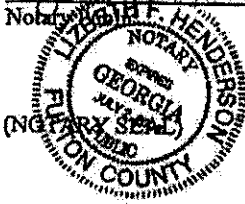
Signed, sealed and delivered
In the presence of:

BIG CANOE UTILITIES COMPANY, INC. a
Georgia corporation

Thomas C. Zeh
Witness

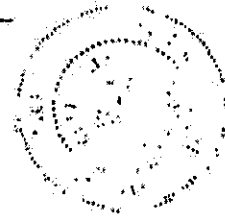
By: [Signature]
Name: William J. Byrne
Title: President

Lizbeth A. Henderson
Notary



Attest: _____
Name: _____
Title: _____

(CORPORATE SEAL)



[END OF SIGNATURES]

EXHIBIT 2

ROGERS & HARDIN



Robert B. Remar
Direct: 404.420.4631
Direct Fax: 404.230.0966
Email: rremar@rh-law.com

November 17, 2017

VIA E-MAIL AND U.S. MAIL

Judson H. Turner, Esq.
Gilbert, Harrell, Summerfield
& Martin, P.C.
545 S. Hill Street
Griffin, GA 30224

Re: Big Canoe Property Owners Association, Inc.
and Big Canoe Utilities Company, Inc.

Dear Jud:

I write to follow up on the October 30, 2017 meeting between representatives of Big Canoe Utilities Company, Inc. ("BCU") and the Big Canoe Property Owners Association, Inc. ("POA").

At the beginning of the meeting you expressed a concern regarding the POA's potential interest in acquiring, either individually or with a governmental entity, BCU and its role as Trustee under the 1984 Trust Deed. In order to resolve any issues going forward, the POA has authorized me to inform you that it will not seek to purchase BCU, either individually or jointly, and that it will continue solely in its role as Trustee under the Trust Deed. Please note that while disclaiming any intent to purchase BCU the POA will continue to explore the creation of a public authority to serve the residents of Big Canoe.

ROGERS & HARDIN

November 17, 2017

Page 2

As we have discussed, and as I have communicated to Mr. Griffin, it is the POA's position that as Trustee it has the responsibility to monitor whether BCU is meeting its obligations under the Trust Deed, including supplying at all times and under adequate pressure a sufficient quantity of potable water to meet the needs of each property and to properly operate and maintain the system for the benefit of the present and future property owners. In addition, the Trust Deed specifically provides that if BCU fails to operate and manage the system in the manner and under the conditions specified in the Trust Deed, and should BCU fail after 60 days prior written notice to correct such failure with reasonable dispatch, then the POA shall take immediate possession of the utility system for the purpose of operating and maintaining the same.

As you know, the POA has serious concerns as to whether BCU has met, and in the future will be able to meet, its obligations to properly operate and maintain the utility system as required by the Trust Deed, the Tri-Party Agreement, the Loan Agreement and the Security Deed with Bank of America. The POA is particularly concerned because the system has suffered from repeated outages, poor pressure, leaks and other operational issues. In addition, BCU has apparently failed to provide Bank of American and the POA with a certificate that the system is in good working order and condition as required by Paragraph 3 of the Tri-Party Agreement.

In order to meet its obligations under the Trust Deed and to protect its rights and the rights of the property owners at Big Canoe, the POA requests that its representatives and a licensed professional engineer be granted access to the BCU facilities for the purpose of inspecting the same. In addition, at the October 30 meeting BCU representatives indicated that since 2010 Cranston Engineering has performed additional assessments on the utility system and facilities. Please provide me with copies of all such assessments.

ROGERS & HARDIN

November 17, 2017

Page 3

I would appreciate a response to the above by close of business on Thursday, November 30, 2017. I am also available to discuss this request at your convenience.

With best regards,

Very truly yours,

A handwritten signature in black ink, appearing to read 'RBR', with a long horizontal line extending to the right.

Robert B. Remar

RBR/sm

cc: Big Canoe POA

EXHIBIT 3

GILBERT, HARRELL, SUMERFORD & MARTIN

A PROFESSIONAL CORPORATION
ATTORNEYS AND COUNSELORS AT LAW
BANK OF AMERICA PLAZA
777 GLOUCESTER STREET, SUITE 200
POST OFFICE BOX 190
BRUNSWICK, GEORGIA 31521-0190
TELEPHONE (912) 265-6700
www.gilbertharrelllaw.com

REPLY TO: BRUNSWICK OFFICE or
DIRECT DIAL - 770-468-9151

November 30, 2017

Via Email and US Mail

Robert B. Remar, Esq.
Rogers & Hardin LLP
2700 International Tower
229 Peachtree Street, N.E.
Atlanta, Georgia 30303

Re: Big Canoe Property Owners Association, Inc. and Big Canoe Utilities Company, Inc.

Dear Rob:

Please accept this letter in response to your correspondence of November 17, 2017. I appreciate that you have given me formal notice that the Big Canoe Property Owners Association, Inc. ("POA") is no longer seeking to purchase the Big Canoe Utilities Company, Inc. ("BCUC"), either individually or jointly. As we discussed at the October 30th meeting at your office, my clients have committed to provide representatives of the POA notice of any prospective buyer at the appropriate time, i.e. after consent of the buyer, but before final execution of any purchase sale agreement. As for the POA's interest in the creation of a public utility that could purchase the assets of the BCUC and assume the obligation to provide water and sewer services to the residents of Big Canoe, I trust that you will keep me informed of any progress or further thoughts you may or your client may have as you explore this option. Passing special legislation to create the authority and putting together any revenue bond issue to purchase the assets will certainly require the cooperation and consent of the equity owners of the BCUC. This option may end up having some promise, but will necessarily be more complicated than any sale to an entity with financing readily available.

As for your renewed request that representatives of the POA and a licensed professional engineer be granted access to the BCUC facilities in order to conduct an inspection, we do not believe that the trust deed confers upon the trustee the right to inspect the BCUC facilities. Thus, your request for access to conduct an inspection is not granted at this time. As we have

November 30, 2017
Page 2

previously discussed, these trust deeds were attempts to ensure that water and sewer utilities would continue to operate and provide services in a manner protective of public health when and only when the incumbent providers of those services failed to do so either through financial default or the inability to address operational deficiencies after a 60-day notice and cure period. Nothing approaching default of its obligations to provide water and sewer services in a manner protective of human health has occurred; therefore, no facts exist that would trigger involvement by the trustee under the trust deed. Inferring a right to inspect, and thus inserting the trustee into the active management of the utility, is quite a construction of the trust deed and well beyond what these instruments were designed to provide.

Finally, we will provide you the updated assessment by Cranston of the system within two weeks of our receipt of the same. We have given you all the Cranston Engineering assessments to date and have not yet received the updated assessment we discussed on the 30th.

Sincerely,

/s/ Judson H. Turner

Judson H. Turner

/kmk

EXHIBIT 4

Filed in Office: 06/06/2012 03:45PM
Deed Doc: ACRE
Bk 01028 Pg 0343-0354
Georgia Intangible Tax Paid: \$0.00
Justin Power Clerk of Court
Dawson County

**RETURN THIS INSTRUMENT.
UPON RECORDATION TO:**

**STEWART, MELVIN & FROST, LLP
P. O. BOX 3280
GAINESVILLE, GA 30503
ATTN: T. TREADWELL SYFAN**

TRI-PARTY AGREEMENT

THIS AGREEMENT, dated as of the 31st day of May, 2012, is by and among **BIG CANOE UTILITIES COMPANY, INC.**, ("Borrower"), a Georgia corporation having an address at 10591 Big Canoe, Jasper, Georgia 30143, **BIG CANOE PROPERTY OWNERS ASSOCIATION, INC.**, as trustee under the Trust Deed described below ("POAV"), a Georgia corporation having an address at 586 Big Canoe, Jasper, Georgia 30143-5129, and **BANK OF AMERICA, N.A.** ("Lender"), 600 Peachtree Street, N.E., 13th Floor, Atlanta, Georgia 30308-2265.

RECITALS:

A. Pursuant to the certain Loan Agreement (the "Loan Agreement") dated of even date herewith, between Lender and Borrower, Borrower has agreed to borrow the amount of \$5,400,000.00 (the "Long Term Loan") and the amount of \$800,000.00 (the "Short Term Loan," and with the Long Term Loan, the "Loans") for the purpose of refinancing Borrower's outstanding indebtedness (the "Prior Debt") owed to Bank of North Georgia incurred for the purpose of improving and expanding the water and sewer utility system, including construction of a water treatment facility, operated by Borrower and serving the real property and improvements thereto located in Pickens and Dawson Counties, Georgia, known as "Big Canoe" (the "Property").

B. Pursuant to the Loan Agreement, Borrower and POA are simultaneously herewith executing and delivering to Lender a Deed to Secure Debt, Assignment of Rents and Security Agreement (the "Security Deed"), which grants to Lender security title to, liens on and security interests in the water and sewer utility system, including the water treatment facility, and related assets, as more particularly described therein (the "Facilities"). The Security Deed shall secure the Loan Agreement, the obligations thereunder and hereunder, and future obligations as described in paragraph E below.

C. In connection with the Loan Agreement, Borrower and Lender have also agreed to enter into an interest rate swap agreement as more particularly set out in that certain ISDA Master Agreement, dated of even date herewith, and that certain Schedule to the ISDA Master Agreement, dated of even date herewith, by and between Borrower and Lender.

D. Pursuant to that certain Trust Deed dated November 29, 1984, between Southeast Holding Company, Ltd., d/b/a Big Canoe Company and POA, recorded in Deed Book 103, pages 210-219, Pickens County, Georgia Records, and in Deed Book 77, pages 437-446, Dawson County, Georgia Records, as amended by First Amendment to Trust Deed dated September 1, 1995, between Borrower (as successor to Southeast Holding Company, Ltd.) and POA, recorded in Deed Book 241, Page 480 Pickens County, Georgia Records and in Deed Book 204, Page 357, Dawson County, Georgia Records, as amended by Second Amendment to Trust Deed between Borrower and Trustee dated March 3, 2005, recorded in Deed Book 636, pages 200-236, Pickens County, Georgia Records and in Deed Book 677, pages 309-345, Dawson County, Georgia Records (as amended, the "Trust Deed"), POA has been conveyed, as trustee, the Facilities.

E. As a condition to executing and delivering the Loan Agreement, Lender has required that the parties hereto enter into this agreement.

F. Borrower and POA both desired those certain improvements to the water and sewer facilities financed by the Prior Debt, since such improvements were of benefit to Borrower, POA and the present and future owners of properties connected to the utility system and recognize that the funds for refinancing the Prior Debt would not be available without agreement of the parties addressing, among other things herein, collateral security for the benefit of Lender.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto incorporate herein the abovementioned recitals and agree as follows:

1. POA hereby acknowledges the terms and conditions of the Loan Agreement and the Security Deed, and agrees that the Trust Deed rights, interests and remedies shall hereafter be subject to the terms and provisions of this Agreement. The POA and Borrower agree that they shall not, other than as provided herein and in the Security Deed, encumber, hypothecate, convey, transfer, or assign the Facilities. POA and Borrower agree that the Trust Deed shall not be further amended, modified or supplemented without the prior written consent of Lender. Notwithstanding the foregoing, nothing herein shall be deemed to prohibit Borrower and Lender from entering into any Swap Agreement or securing Borrower's obligations thereunder with the Property or any other collateral for the Loan.

2. Lender hereby acknowledges the terms and conditions of the Trust Deed and agrees that the exercise by Lender of the rights and remedies under the Loan Agreement, the Security Deed, and any other documents delivered in connection therewith and with any additional indebtedness or obligations (collectively, the "Loan Documents") shall hereafter be subject to the terms of this Agreement. Lender also acknowledges the requirements of the State

of Georgia, currently in effect, that a trustee be in place for private utility systems. The parties hereto acknowledge and agree that in the event (a) POA chooses to proceed under Paragraph 5(a) or 5(b) below and fails to fully and timely perform pursuant to and comply with all of the provisions of Paragraph 5(a) or 5(b), as the case may be, or (b) POA fails to choose to proceed under either Paragraph 5(a) or 5(b) within the 45-day period set forth in Paragraph 5 below, or (c) POA proceeds under Paragraph 5(b) below and the Corporation thereafter defaults in the payment or performance of any indebtedness, agreement, duty or obligation under the Loan Documents or this Agreement following the expiration of any applicable notice and cure periods contained herein or therein, or (d) Lender exercises the power of sale set forth in Paragraph 6.3(c) of the Security Deed in accordance with the terms and provisions of this Agreement, or (e) the State of Georgia or any political subdivision, department, agency or instrumentality of the State of Georgia (collectively, the "State") requires the removal of POA as Trustee or otherwise requires or imposes a new or different trust arrangement with respect to the Facilities that requires the removal of the POA as Trustee, or (f) POA is removed or otherwise ceases to serve as Trustee under the Trust Deed for any reason whatsoever, then, in any of such events, Lender shall have the right to appoint a substitute or replacement trustee to serve as Trustee under the Trust Deed or, if such be the case, under a new or different trust arrangement as may be required by the State, which appointment shall be subject to any required approval of the State, and such substitute or replacement trustee shall recognize the indebtedness owed to Lender under the Loan Documents and shall obligate itself to repay such indebtedness in accordance with the terms of the Loan Documents and this Agreement and to perform the obligations of Trustee under the Trust Deed or any new or different trust arrangement as may be required and approved by the State. To facilitate any such appointment of a substitute or replacement trustee by Lender, Borrower and POA hereby constitute and appoint Lender the agent and attorney-in-fact of Borrower and POA to take all actions necessary in connection therewith, and all the acts and doings of said agent and attorney-in-fact in connection therewith, including, without limitation, any transfer, assignment or conveyance to such substitute or replacement trustee of all of POA's right, title and interest in and to the Facilities and all of POA's right, title and interest under the Trust Deed, are hereby ratified and confirmed. The aforesaid power of sale and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise.

3. The Borrower hereby acknowledges that it shall be hereafter subject to the terms of this Agreement and agrees to annually provide to the POA and Lender, at Borrower's expense and within 60 days of each fiscal year end, evidence reasonably satisfactory to the POA and Lender and in the form of a certificate from a circuit rider certified by the National Rural Water Association or a qualified engineer, that the Borrower's water and sewer system is in good working order and condition.

4. Lender shall send to POA copies of all notices given to Borrower under the Loan Documents simultaneously with the giving of such notice to Borrower. The parties hereto agree that any such notice given to Borrower by Lender under the Loan Documents that an Event of Default has occurred shall also be deemed to constitute notice of default given by POA to Borrower under the Trust Deed. POA shall send to Lender copies of all notices given to Borrower under the Trust Deed, including any notices of the occurrence of any event which would permit POA to exercise its rights under the Trust Deed simultaneously with the giving of such notices to Borrower.. Borrower and POA acknowledge and agree that Lender shall have the right, but shall not be obligated, to cure any breach or default in the performance or observance

of or compliance with the agreements, duties, obligations and other provisions under the Trust Deed.

5. Following the occurrence of: (1) any Event of Default under any of the Loan Documents or any breach or default under any Swap Agreement, any one of which the parties agree shall be deemed, for the purposes of this Agreement, a breach of the Borrower's obligations, as Grantor, under the Trust Deed, and shall permit the exercise of the rights and remedies available under Sections 4, 5, 7 and 8 thereunder or (2) any event which would permit POA to exercise its rights under the Trust Deed, it is understood, acknowledged, and agreed that Lender shall send to POA a copy of any written notice given to Borrower of any occurrence under item (1) above simultaneously with the giving of such notice to Borrower, and POA shall promptly give written notice to Lender of any occurrence under item (2) above, and thereupon the POA shall, within forty-five (45) days after receipt of such notice from Lender or the occurrence of the event under item (2) above, notify Lender in writing which of the two below stated courses of action it has chosen (it being understood and agreed that POA shall be required to choose one of said two courses of action within said 45-day period) and consistent therewith:

a) Commence taking all necessary steps to expeditiously take possession of the Facilities pursuant to the Trust Deed and this Agreement, in which event POA shall, simultaneously with the taking of possession, pay to Lender any and all indebtedness outstanding under the Loan Documents and hereunder, as well as any early termination penalty or fee provided for under any Swap Agreement, and, upon receipt of such payment, Lender shall release the lien of the Security Deed;

OR:

b) Commence, pursuant to the Trust Deed and this Agreement, taking all necessary steps to expeditiously take possession of the Facilities, subject to the Loan Documents and any Swap Agreement, but not to pay off the amounts due thereunder. POA shall create a corporation ("Corporation") which will (i) succeed to the rights, duties and obligations of Borrower under the Trust Deed, (ii) assume and be liable for all indebtedness, duties and obligations of Borrower under the Loan Documents, any Swap Agreement and this Agreement (without Borrower being released therefrom) pursuant to documentation in form and substance satisfactory to Lender, (iii) cure all Events of Default under the Loan Documents and all breaches and defaults under the Trust Deed, any Swap Agreement and hereunder, and (iv) insure, repair, restore, operate and maintain the water and sewer facilities in accordance with sound industry practice. The POA, the Corporation and the Facilities shall be subject to all of the provisions of the Loan Documents and any Swap Agreement, including, without limitation, all payment provisions and the security title, liens and security interests granted by the Security Deed, which shall be first priority security title, liens and security interests. The POA, in its election hereof, assumes no personal liability under the Loan Documents, any Swap Agreement or this Agreement, beyond Lender's exercise of its rights and remedies under the Loan Documents, any Swap Agreement and hereunder against the Borrower, the Corporation, the Facilities and any other assets of the Borrower, the Corporation or the POA as trustee, but excluding the separate assets held by the POA individually and not as trustee. In the event POA chooses to proceed under paragraph (a) above, POA shall pay

any and all of the indebtedness outstanding under the Loan Documents, any Swap Agreement and hereunder within thirty (30) days after POA gives notice of such choice to Lender. In the event POA chooses to proceed under paragraph (b) above, POA shall, within sixty (60) days after POA gives notice of such choice to Lender, create the Corporation and cause the Corporation (i) to succeed to the rights, duties and obligations of Borrower under the Trust Deed, (ii) to assume and be liable for all indebtedness, duties and obligations of Borrower under the Loan Documents, any Swap Agreement and this Agreement (without releasing Borrower therefrom) pursuant to documentation in form and substance satisfactory to Lender, (iii) to be in possession of and operating the Facilities, and (iv) to cure all Events of Default under the Loan Documents and all breaches and defaults under the Trust Deed, any Swap Agreement and hereunder. So long as POA and the Corporation fully and timely perform pursuant to and comply with all of the foregoing provisions of this paragraph 5, Lender agrees that it shall not consummate any sale under the power of sale granted to Lender in Paragraph 6.3(c) of the Security Deed and it shall waive its right to collect interest at the default rate under Section 5.6 of the Loan Agreement. In the event POA or the Corporation fails to fully and timely perform pursuant to and comply with any of the foregoing provisions of this paragraph 5, Lender shall be entitled to sell the Facilities under the power of sale set forth in Paragraph 6.3(c) of the Security Deed.

6. [Reserved].

7. Subject to Paragraph 6.3(e) of the Security Deed, upon the full and timely performance and compliance by POA and the Corporation with either of paragraphs 5(a) or (b) above, the customers of the utility system shall pay all fees and charges attributable thereto, including but not limited to periodic water and sewer charges, supplements and surcharges, all reservation and hook-up charges, and all past due and collection fees (collectively, the "Charges"), directly to the POA or the Corporation, as applicable.

8. Except as otherwise expressly provided in Paragraphs 2 and 5 of this Agreement with respect to the exercise by Lender of the power of sale contained in Paragraph 6.3(c) of the Security Deed, all parties hereto agree that nothing contained in this Agreement shall be deemed or construed to restrict, limit, delay, impair or otherwise adversely affect the exercise by Lender of any rights, powers or remedies under the Loan Documents. Notwithstanding anything to the contrary contained in the prior sentence, in the event that the POA affirmatively elects the option set forth in Section 5(b) above, and fulfills its obligations thereunder, Lender will not exercise its rights, powers or remedies under the Loan Documents with regard to any defaults cured by the POA in accordance with the provisions of Section 5(b) hereof.

9. In the event POA has elected to take the action described above in Paragraph 5 and POA and the Corporation have fully and timely performed pursuant to and complied with the provisions of Paragraph 5, once all indebtedness owed Lender has been fully repaid in cash, Lender shall release the lien of the Security Deed, other Loan Documents, and other documents related thereto.

10. The parties recognize and agree that, in the event any customer fails to timely pay any Charges, Borrower (or POA, the Corporation, Lender or any operator, as the case may be)

shall have the right to discontinue utility service to the property owned or controlled by such customer until such time as all delinquent Charges, together with any applicable re-connection, interest and late fees, have been paid in full.

11. Lender and Borrower acknowledge that applicable fees and charges for utility services are currently in accordance with Exhibit A attached hereto and made a part hereof.

12. Borrower agrees that it will provide to the POA copies of any reports or other information given or required to be given to Lender pursuant to the Loan Documents and any other correspondence relating to the Loan Documents received by the Borrower from Lender.

13. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns (including, without limitation, as to the POA, any substitute or replacement trustee), and shall, to the extent expressly stated herein, affect the Loan Agreement, Security Deed, and Trust Deed.

14. Borrower and POA agree to execute such farther documents, including but not limited to deeds to secure debt, security agreements, financing statements, assignments, pledges, and Borrower shall obtain state and local regulatory approvals, as Lender may reasonably request to confirm and give effect to the agreements contained herein. Further, the POA agrees to pay all reasonable and actual costs and expenses, including retained counsel, of Lender associated with the POA exercising the elections provided hereinabove and for any breach hereof by the POA.

15. Any notice or communication to Borrower, the POA, or Lender by any other party hereto shall be duly given if in writing and delivered in person (including delivery by Federal Express or other overnight courier service) or mailed by United States Registered or Certified Mail, return receipt requested, postage prepaid, addressed as follows:

If to Borrower: Big Canoe Utilities Company, Inc.
 10591 Big Canoe
 Jasper, Georgia 30143
 Attn: William J. Byrne

If to Lender: Bank of America, N.A.
 MO1-800-08-11
 800 Market Street, 8th Floor
 St. Louis, MO 63101-2510
 Attn: _____

If to POA: Big Canoe Property Owners
Association, Inc.
10586 Big Canoe
Jasper, Georgia 30143
Attn: General Manager .

Borrower, Lender or POA by notice to the others may designate additional or different addresses for subsequent notices or communications.

Any such notice or communication shall be deemed to have been properly given when given in the manner designated herein, but actual notice, however given or received, shall always be effective; provided, however, the date of personal delivery or the date set forth on the return receipt, as the case may be, shall be the effective date of such notice or communication.

16. This Agreement shall remain in full force and effect unless and until the indebtedness owed to Lender under the Loan Documents shall have been paid in full and the Security Deed shall have been satisfied and cancelled of record. No foreclosure of or exercise of the power of sale contained in the Security Deed and no conveyance of the Facilities in lieu of foreclosure or in lieu of exercise of power of sale shall be deemed or construed to constitute payment of the indebtedness owed to Lender under the Loan Documents, nor shall any of the same be deemed or construed to constitute a satisfaction or cancellation of the Security Deed.

17. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Georgia.

18. Time is of the essence with respect to all provisions of this Agreement.

19. In the event of any conflict between the express provisions of this Agreement and the express provisions of any of the Loan Documents, such provisions of this Agreement shall control. In the event of any conflict between the express provisions of this Agreement and the express provisions of the Trust Deed, such provisions of this Agreement shall control.

20. Notwithstanding any other provision of this Agreement, the parties hereto further acknowledge and agree that unless and until a county or municipal government assumes operation of the Facilities, a State-approved Trust Agreement must be in place at all times to assure the uninterrupted operation of the Facilities. The POA's exercise of its right to assume operation of the Facilities pursuant to Paragraph 5(a) or 5(b) above, and Lender's exercise of the power of sale set forth in Paragraph 6.3(c) of the Security Deed, each shall be subject to the obligation that the Facilities remain in operation and compliance with applicable laws, and the requirement that a State-approved Trust Deed with a Trustee acceptable to the Environmental Protection Division ("EPD") be in place at all times, even if the POA becomes the primary operator of the Facilities, and, thus, has to obtain an acceptable backup Trustee. Accordingly, the parties understand and agree that EPD is a third party beneficiary of this Agreement and may enforce its terms.

21. Notwithstanding anything contained in this Agreement or in the Loan Documents to the contrary, no modification to the Security Deed and/or this Agreement may be made

without the prior written consent of Borrower and the POA, which consent shall not be unreasonably withheld, conditioned or delayed. Further notwithstanding anything contained in this Agreement or in the Loan Documents to the contrary, the Loan Documents shall not be modified for the following reasons without first obtaining the consent of the POA and Borrower, which consent shall not be unreasonably withheld, conditioned or delayed:

1. Any modification to the Loan Documents which increases the amount of indebtedness evidenced under the Loan Agreement and secured by the Security Deed; provided, however, that Lender shall have the right, in its sole and absolute discretion, to increase the amount of indebtedness evidenced under the Loan Agreement to include amounts disbursed by Lender pursuant to Paragraph 6.3(f) of the Security Deed and any other amounts disbursed by the Lender for the purpose of payment of real estate taxes (including special payments in lieu of real estate taxes), maintenance costs, insurance premiums or other items reasonably necessary to protect the Property from forfeiture, casualty, loss or waste, and to file of record such notices, liens or amendments as Lender deems necessary or appropriate in connection with such advances and expenditures; and/or
2. Any modification to the Loan Documents which partially or fully discharges one party's secured obligations arising under the Loan Documents (or in the case of William J. Byrne, which discharges his obligations arising pursuant to the Guaranty) without similarly discharging the other parties' secured obligations (or in the case of William J. Byrne, his obligations arising pursuant to the Guaranty) under the Loan Documents.

Except as set forth above, Borrower shall have the right, in its sole discretion, to seek any other modification to the Loan Documents from Lender without first obtaining the POA's prior consent; provided, however, that Borrower shall provide the POA with reasonable prior written notice of the modification to the Loan Documents being sought from Lender and shall deliver to the POA, within a reasonable period of time following the execution thereof, copies of all executed modifications. The POA hereby acknowledges and agrees that Borrower's retention of flexibility and discretion with respect to the administration and operation of the Facilities in connection with the Loans constitutes a material inducement for Borrower to enter into this Agreement, and unless otherwise specifically excepted above, the POA hereby acknowledges and agrees that Borrower and Lender shall be entitled to negotiate and enter into binding modifications to the Loan Documents without the consent of the POA.

22. Notwithstanding any provision of this Agreement to the contrary, Lender may from time to time offer to Borrower the option to enter into a Swap Agreement (as hereinafter defined) (it being agreed, however, that Lender shall have no obligation to make any Swap Agreement available to Borrower, and that Borrower shall have no obligation to enter into any Swap Agreement). Any Swap Agreement as in effect from time to time, if any, are independent agreements governed by the written provisions of said Swap Agreement, which will remain in full force and effect, unaffected by any repayment, prepayment, acceleration, reduction, increase or change in the terms of the Loan Agreement, except as otherwise expressly provided in said written Swap Agreement, and any payoff statement from Lender relating to the Loan Agreement shall not apply to said Swap Agreement unless expressly referred to in such payoff statement.

As used in this Agreement, "Swap Agreement" means any of the following entered into between Borrower and Lender (or any affiliate, successor and/or assign of Lender): (A) any agreement (including terms and conditions incorporated by reference therein) which is a swap agreement (as defined in 11 U.S.C. § 101), basis swap, forward rate agreement, commodity swap, interest rate option, forward foreign exchange agreement, spot foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency option, any other similar agreement (including any option to enter into any of the foregoing); (B) any combination of the foregoing; or (C) any master agreement for any of the foregoing, as any of the foregoing may be amended or supplemented from time to time.

23. This Agreement may be executed in several counterparts, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same agreement

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the date and year first above written.

BORROWER:

**BIG CANOE UTILITIES COMPANY,
INC.**

By: *William J. Byrne*
William J. Byrne, President

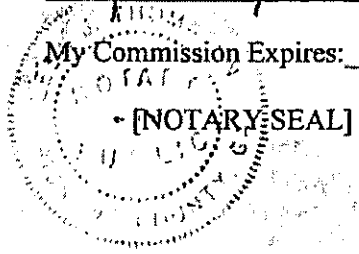
Signed, sealed and delivered
in the presence of:

Barbara J. Buchanan
Witness

Notary Public for Georgia

Jesa G. Thomason

My Commission Expires: 2/15/14



LENDER:

BANK OF AMERICA, N.A.

Signed, sealed and delivered
in the presence of:

[Signature]
Witness

By: [Signature]
Title: SENIOR VICE PRESIDENT

Notary Public for Georgia

P. Christine Eubanks

My Commission Expires: 9-29-15

[NOTARY SEAL]



**POA, IN ITS CAPACITY AS TRUSTEE
UNDER THE TRUST DEED:**

**BIG CANOE PROPERTIES OWNERS
ASSOCIATION, INC., as Trustee**

Signed, sealed and delivered
in the presence of:

Nandra Stoussie
Witness

By: *Charles Palmer*
President

Notary Public for Georgia

Deborah H. Pickett

Attest: *Camryn Payne*
Secretary

My Commission Expires: 01/03/2015

[CORPORATE SEAL]

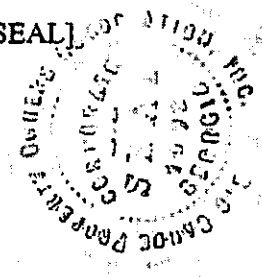
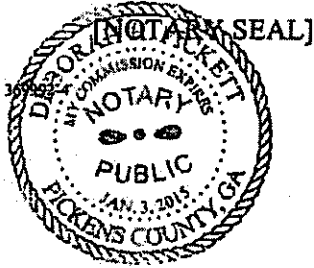


EXHIBIT "A"

METERED WATER RATES

Residential Customers

Bk 01028 Pg 0354

- Minimum monthly charge: \$38.00
- Charge per 1,000 gallons up to 15,000 gallons total period usage: \$ 3.40
- Charge per 1,000 gallons for usage from 15,001 to 20,000 gallons during period: \$ 5.00
- Charge per 1,000 gallons for usage over 20,000 gallons during period: \$ 8.00

Commercial Customers

- Minimum monthly charge \$38.00
- Charge per 1,000 gallons over minimum during period: \$ 3.40

SEWER USAGE RATES

Residential Customers

- Minimum monthly charge: \$52.46

Commercial Customers

- Minimum monthly charge: \$78.69

WATER CONNECTIONS

- Payment due per connection based on meter size:

¾": \$2500

1": \$3000

1.5": \$4000

SEWER CONNECTIONS

- Payment due per connection based on meter size:

¾": \$2500

1": \$3000

1.5": \$4000

OTHER WATER RATES

Water Availability (Stand-by Fee)

Monthly charge on unimproved home sites for availability of water service. Billed annually: \$ 5.00/month

SERVICE TRANSFERS

All customers

- New Account Fee paid upon sale or transfer of property: \$100.00

OTHER CHARGES

- Returned check charge: \$25.00
- Late charges if not paid by due date: 5%
- Service reconnection fee: \$200.00

The customer is responsible for all water usage and maintenance beyond the customer's meter. You are advised to regularly check your meter for evidence of excessive usage from undetected leaks and implement a winterizing program.

IN THE SUPERIOR COURT OF PICKENS COUNTY
STATE OF GEORGIA

BIG CANOE PROPERTY OWNERS)
ASSOCIATION, INC.)

Plaintiff,)

v.)

BIG CANOE UTILITIES COMPANY,)
INC.)

Defendant.)

CIVIL ACTION FILE
NO. _____

VERIFICATION

Before an officer duly authorized to administer oaths appeared Phillip Anderson who, after being duly sworn, deposes and states the following:

My name is Phillip Anderson. I am the President of the Big Canoe Property Owners Association, Inc. The facts stated in the attached Verified Complaint For Injunctive And Declaratory Relief are true to the best of my knowledge and belief.

This 10th day of January, 2018.

Phil Anderson

Phil Anderson, President
Big Canoe Property Owners Association, Inc.

Sworn to and subscribed before me
this 10th day of January, 2018.

Deborah A. Pickett

Notary Public (Signature)

My Commission expires: 01/03/2019

