

Exhibit No.:  
Issues: Availability Fees  
Witness: James A. Merciel, Jr.  
Sponsoring Party: MoPSC Staff  
Type of Exhibit: Surrebuttal Testimony  
Case No.: WR-2013-0461  
Date Testimony Prepared: January 31, 2014

**MISSOURI PUBLIC SERVICE COMMISSION**

**UTILITY SERVICES DIVISION**

**SURREBUTTAL TESTIMONY**

**OF**

**JAMES A. MERCIEL, JR.**

**LAKE REGION WATER AND SEWER COMPANY**

**CASE NO. WR-2013-0461**

*Jefferson City, Missouri  
January 2014*

**REBUTTAL TESTIMONY**

**OF**

**JAMES A. MERCIEL, JR.**

**LINCOLN COUNTY SEWER & WATER, LLC**

**CASE NO. WR-2013-0461**

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**REBUTTAL TESTIMONY**  
**OF**  
**JAMES A. MERCIEL, JR.**  
**LINCOLN COUNTY SEWER & WATER, LLC**  
**CASE NO. WR-2013-0461**

**INTRODUCTION**

Q. Please state your name and business address.

A. James A. Merciel, Jr., P. O. Box 360, Jefferson City, Missouri, 65102.

Q. By whom are you employed and in what capacity?

A. I am employed by the Missouri Public Service Commission (Commission) as a Utility Regulatory Engineering Supervisor, in the Water and Sewer Unit.

Q. Please describe your education and work experience.

A. I graduated from the University of Missouri at Rolla, now named Missouri University of Science and Technology, in 1976 with a Bachelor of Science degree in Civil Engineering. I am a Registered Professional Engineer in the State of Missouri. I worked for a construction company in 1976 as an engineer and surveyor, and have worked for the Commission in the Water and Sewer Unit since 1977.

Q. What are your work responsibilities at the Commission?

A. My responsibilities include reviewing information and making recommendations with regard to certifications for new water and sewer utilities, sales of utility systems, formal complaint cases, and technical issues associated with water and sewer utility rate cases. In addition to formal case work, I handle informal customer complaints that are of a technical nature, conduct inspections and evaluations of water and sewer utility systems, and informally assist water and sewer utility companies with respect to day-to-day

1 operations, planning, and customer service issues. In the past, I have supervised engineers  
2 and technicians in the Water and Sewer Unit working on the above-described type of case  
3 work and informal matters. In the context of my position with Staff, I served on the American  
4 Water Works Association Small Systems Committee for three years, served on the National  
5 Association of Regulatory Utility Commissioners Staff Subcommittee on Water for  
6 approximately the past seventeen (17) years, and frequently participate in workshop and  
7 rulemaking sessions at the Missouri Department of Natural Resources.

8 Q. Have you testified before the Commission previously?

9 A. Yes. A list of cases in which I have provided testimony is included as  
10 Schedule JAM-1 to this surrebuttal testimony.

11 **PURPOSE OF TESTIMONY**

12 Q. What is the purpose of your surrebuttal testimony?

13 A. The purpose of my surrebuttal testimony is to respond to some statements  
14 made by Lake Region Water & Sewer Company's (Lake Region or the Company) witness  
15 John R. Summers in his rebuttal testimony regarding availability fees. Staff witness Kimberly  
16 K. Bolin is also filing surrebuttal testimony on the issue of Availability Fees.

17 **AVAILABILITY FEES**

18 Q. What are availability fees?

19 A. "Availability fees," or sometimes called "availability charges," are recurring  
20 charges that owners of most of the subdivision lots in the Company's service area are  
21 obligated to pay, if those owners are not water and/or sewer utility customers but water and/or  
22 sewer facilities are adjacent to their lots and service is readily available.

23 Q. What is the issue regarding availability fees in this proceeding?

1           A.     In this proceeding, the issue is whether or not the revenues associated with  
2     availability fees should be included in Lake Region's utility revenue stream, or alternatively  
3     those revenues otherwise used in some manner as a capital offset. The treatment of  
4     availability fees was briefly discussed in Staff's Revenue Requirement Cost of Service Report  
5     that was filed in this case on November 15, 2013, with associated revenues Staff proposed to  
6     include as utility income. Staff takes the position, for the Company's specific situation, that  
7     revenues derived from availability fees are utility related, intended for utility use, and  
8     properly included as utility revenue. The Company takes the position that availability fees are  
9     not for utility use and should not be included whatsoever for ratemaking.

10          Q.     What is Staff's basis for its inclusion of availability fees as utility revenue?

11          A.     The basis is language in the subdivision covenants and restrictions applicable  
12     to most lot owners in the Company's service area, which create the availability fees. I have  
13     included with this testimony as Schedule JAM-2, and incorporated by reference herein, some  
14     pages from the subdivision documents pertaining to availability fees. Entire subdivision  
15     documents that include these pages were submitted as schedules in rebuttal testimony  
16     prepared by me and filed on behalf of Staff in the Company's previous rate case, WR-2010-  
17     0111 (EFIS item 98 in that case).

18          Q.     Was the availability fee issue addressed in the Company's previous rate case,  
19     WR-2010-0111?

20          A.     Yes, Lake Region's previous rate case included extensive testimony and  
21     exhibits with regard to availability fees, and particularly how availability fees are related to  
22     the Company. My own testimony in that case included an overview of how availability fees  
23     can work, and some advantages and disadvantages, from Staff's perspective.

1           Q.     In his rebuttal testimony, on page 1 lines 19 through 22, Mr. Summers states “I  
2 must emphasize that the Company has no rights to the availability fees. Additionally, it has  
3 been my experience and understanding based on previous Missouri Public Service  
4 Commission (Commission) cases that the Commission does not regulate availability fees.”  
5 Do you agree with these statements?

6           A.     No, I do not agree with those statements. First, with regard to the Company’s  
7 “rights” to the availability fee revenue, it indeed seems that Lake Region, as a corporation,  
8 does not currently receive the revenue directly. Lake Utility Availability 1, an unregulated  
9 affiliate of Lake Region, currently has the “rights” to the availability fees. However, as has  
10 been pointed out in the Company’s last rate case and in Staff’s Revenue Requirement Cost of  
11 Service Report, the availability fee revenue was initially in the possession and control of Lake  
12 Region, as per the subdivision covenants and restriction documents that create the availability  
13 fees (see Schedule JAM-2). Lake Region apparently intentionally assigned the revenue to  
14 other corporations or fictitious entities in approximately March 1999, as was outlined in the  
15 last case, and Staff considers the Company’s decision to take this action imprudent. The  
16 reason for Staff’s position that this was an imprudent decision is because the revenue derived  
17 from the availability fees originally, as per the subdivision covenants and restrictions, were to  
18 be paid to the owner of the water or sewer system, which would be Lake Region. The  
19 availability fees in fact were originally paid to and usable by Lake Region, as was  
20 documented in the Company’s last rate case. Since Staff believes that assigning this revenue  
21 away from the utility was not prudent, Staff recommends treating the availability fees as  
22 payable to the Company, and the revenue used by the Company, as originally provided in the  
23 subdivision documents.

1           Second, regarding Mr. Summers' statement about his understanding that the  
2 Commission "does not regulate" availability fees, my response is that the Commission has, in  
3 fact, included availability in rates for regulated utilities in the past, and thus has at times  
4 asserted jurisdiction over them. There may be limitations on the extent of the Commission's  
5 jurisdiction over availability fees, as can be and likely will be addressed further in this case.  
6 Such limitation may depend to some extent on any specific situations or details of how  
7 availability fees are created, which are quite variable. Mr. Summers knows or should know  
8 that the Commission asserts its jurisdiction over availability fee revenue with other regulated  
9 utilities, because availability fee revenue is included in the rate calculations of Ozark Shores  
10 Water Company, which is a regulated water utility, is a successor owner of some water  
11 system assets of the Company, has common ownership with the Company, and is managed by  
12 Mr. Summers. Such revenue has been included since the Company, under its original name  
13 Four Seasons Lakesites Water & Sewer Co., obtained a certificate of convenience and  
14 necessity in Case No. 17,954 in 1973. Additionally, in the Company's last rate case, Staff  
15 pointed out two other unrelated regulated utilities where not only availability fee revenue was  
16 included as utility revenue, but the availability fees were also charges included and published  
17 in the utilities' tariffs. So, this portion of his testimony is factually incorrect, and his  
18 testimony recommending that the Commission refrain from any treatment of availability fees  
19 in this rate case is based on an incorrect premise that the Commission's current and past  
20 practice has always excluded availability fees.

21           Q.     Besides the Company and Ozark Shores Water Company, as stated, which  
22 other two utilities have or had availability fees with the revenue included as utility revenue?

1           A.     Peaceful Valley Service Company (Peaceful Valley) and I. H. Utilities, Inc.  
2 (IH) are two utilities that have or had availability fees. Please note that Peaceful Valley has a  
3 pending rate case before the Commission, WR-2014-0154, filed on November 20, 2013.  
4 However, as a matter of public record, Peaceful Valley, which provides water and sewer  
5 service in a subdivision in Gasconade County near Owensville, MO, presently has availability  
6 fees included in its water tariff. And as such, the revenue collected through this regulated  
7 charge is included as water utility revenue. Documentation of this was included by Staff in  
8 the Company's last rate case, and the same rates as were in effect then are presently still in  
9 effect. I have included as Schedule JAM-3 and incorporated by reference herein a copy of  
10 one sheet from Peaceful Valley's current tariff showing its rates including the availability  
11 charge, and three (3) pages from the Staff Auditing Unit's workpapers from Peaceful Valley's  
12 last rate case, WR-2009-0145, showing company water revenue and including availability  
13 charge revenue included with the total water revenue. Peaceful Valley has had availability  
14 fees in its approved water tariff since 1981.

15           IH provides water service in a subdivision in Crawford County near Cuba, MO.  
16 Included as Schedule JAM-4 and incorporated by reference herein are two tariff route slips  
17 from the Staff to the Commission. In File No. 81000742 from 1981, Staff recommended and  
18 the Commission approved a tariff sheet that included an availability charge in the tariff. The  
19 route slip and packet for File No. 8700418 from 1987 represented a Staff recommendation for  
20 a small company rate case for IH<sup>1</sup>. One page among those attached to the route slip is  
21 included in Schedule JAM-4, that page being a Staff worksheet showing expenses and rate  
22 calculations, with some expense shown as allocated to availability fees. The revenue

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<sup>1</sup> This route slip and included documents represented a Staff recommendation for a rate increase for this utility company. At that time, informal rate requests were handled only by tariff filing and recommendation, with no formal case number assigned as is the Commission's practice today.



1 associated with availability fees was thus included as utility revenue at that time. In a recent  
2 rate case IH voluntarily deleted the rate and ceased charging availability fees.

3 Q. On pages 3 and 4 of his rebuttal testimony, Mr. Summers discusses the  
4 Commission's direction for how to determine future treatment of availability fees, including  
5 creating a workshop docket. Do you have comments regarding his statements on this matter?

6 A. Yes. Mr. Summers is correct that a workshop docket was created by the  
7 Commission after Lake Region's last rate case. However, the workshop docket was later  
8 consolidated into a pre-existing docket addressing issues with small water and sewer utilities.  
9 As espoused in its pleading requesting closing of the small systems workshop, Staff had  
10 determined, and still believes, that availability fees are both rare and too situation-specific to  
11 be able to write a rule expected to fit all such situations, and therefore, treatment of  
12 availability fees for any given utility would best be handled on a case-by-case basis. In its  
13 motion to close the workshop docket Staff stated this was its belief about all the unresolved  
14 issues in the workshop docket, and the Commission granted the motion.

15 Q. On page 5 lines 5 through 11 of his rebuttal, Mr. Summers mentions what he  
16 says was a past Commission decision pertaining to treatment of availability fees for the  
17 Company's Shawnee Bend service area, from Case No. WA-95-164; do you agree with his  
18 assessment of such a prior Commission decision?

19 A. No, I do not agree. The Commission made no such decision regarding  
20 treatment of availability fees in Case No WA-95-164, which was the case in which the  
21 Company obtained a certificate of convenience and necessity (CCN) for its Shawnee Bend  
22 service area. Staff did state, in a recommendation, that it would consider treatment of  
23 availability fees in a future rate review. The Company's last rate case was the first review of

1 the availability fee situation in the Company's Shawnee Bend service area since that CCN  
2 case. These facts were also stated by Staff in the Company's last rate case.

3 Q. On page 5 line 18 through page 6 line 5 of his rebuttal testimony, are Mr.  
4 Summers' statements accurate when he states that the subdivision covenants and restrictions  
5 provide for availability fees to be paid to assigns and designees?

6 A. Yes his statements are accurate, but as stated earlier in this surrebuttal  
7 testimony, Staff takes the position that it was not a prudent decision for the owners of the  
8 Company to assign the revenue to themselves or others, and this is especially so since there  
9 was no apparent consideration of any value to the lot owners or Company customers in return.

10 Q. On page 6 line 13 through page 7 line 9 of his rebuttal testimony, Mr.  
11 Summers rebuts Staff's report by disagreeing that Staff's position is consistent with treatment  
12 in past water or sewer rate cases. Do you agree with his statements?

13 A. No, I do not agree. Mr. Summers states the Company has reviewed past cases  
14 and states that the Company finds that availability fee revenue was only included if  
15 "associated rate base" was included, or excluded availability fees if plant investment is  
16 contributed plant. The term "associated rate base" itself could have debatable meaning;  
17 almost all regulated utilities have some amount of rate base, some utilities have more  
18 contributed plant than others, and some have asset that are largely depreciated. Staff and the  
19 Commission, in past cases, have treated availability fee revenue as utility revenue, as  
20 described above, without any rulemaking. Staff's proposal in this case is not a "drastic policy  
21 change." I consider past treatment of the availability fee issue, for the several utilities that  
22 have them, to be consistent with what Staff proposes in this case.

1 Q. On page 11 lines 1 through 12 of his rebuttal testimony, Mr. Summers states  
2 that Staff's proposed treatment of availability fee revenue would affect the utility's financial  
3 viability. Do you agree with this statement?

4 A. No, I do not agree. Utility viability is an extremely important issue in general  
5 with Staff, and I have observed the Commission in other cases to be concerned with viability  
6 especially as it pertains to small water and sewer utilities. However, viability, in my opinion,  
7 is not threatened by Staff's proposal of this treatment. And in fact, as stated in testimony in  
8 the Company's last rate case, availability fee revenue can be quite important to supplement  
9 revenue in the early growing years of a new utility system before there are enough customers  
10 to provide a self-sustaining level of revenue. Additionally, in a recreational development  
11 where some people buy subdivision lots for access to subdivision amenities but do not  
12 construct homes on those lots, there can be a need to supplement revenue for the purpose of  
13 maintaining a water distribution system or sewer collection system that is larger (more pipe  
14 footage) than what would be ordinarily needed for the customers if lots with houses were not  
15 intermingled with lots without houses. The availability fee revenue, if it is the utility's, would  
16 actually be an enhancement to utility viability. So, there are good reasons why availability fee  
17 revenue should be included as utility revenue, rather than deem the revenue as a method of  
18 capital recovery by the developer in addition to recovery by lot sales. Rather than Staff's  
19 position endangering the viability of the Company, my opinion is that utility viability was and  
20 is threatened by the Company's imprudent decision to assign away utility income.

21 **SUMMARY OF TESTIMONY**

22 Q. Could you please summarize this surrebuttal testimony?

23 A. Yes. Staff recommends availability fees, in this case, be treated as payable to  
24 the Company, as is contemplated by the subdivision covenants and restriction documents; and

1 | the funds treated as Company revenue, as is consistent with the Staff's and the Commission's  
2 | past treatment of availability fees with respect to other regulated utilities.

3 |       Q.     Does this conclude your surrebuttal testimony?

4 |       A.     Yes.

**WR-2014-0461 – Lake Region Water & Sewer Co.  
Cases with Testimony by James A. Merciel, Jr. (not all inclusive)  
January 2014**

Algonquin Water Resources

WR-2006-0425

Aqua Missouri, Inc.

SC-2007-0044

Big Island – Folsom Ridge

WO-2007-0277

Bill Gold Investments, Inc.

WC-93-276 (11/5/93) – Receivership case

Blue Lagoon, LLC

SO-2008-0358

Camelot Utility Co.

WA-89-1

Capital City Water Co.

WR-94-297

WR-90-118

WO-89-76 – plant capacity study

WR-88-215

WR-83-165.

Davis Water Company

WC-87-125 and WC-88-288 - quality of service, lack of needed upgrades

Along with a proceeding in the Circuit Court in Wayne County approx 1988

Environmental Utilities, LLC

WA-2002-65 (11/2001) Certificate case

Finley Valley Water Company / Public Funding Corporation, City of Ozark

WM-95-423

Gascony Water Company, Inc.

WA-97-510

House Springs Sewer Co.

SC-2008-0409

Lake Region Water and Sewer Co.

SR-2010-0110 and WR-2010-0111

Lake Saint Louis Sewer Co.

SR-78-142

SA-78-147 - expansion of service area

SC-78-257 - The Nine-Twelve Investment Co., et al Oak Bluff Preserve vs.

Lake Saint Louis Sewer co, regarding method of providing service.

SO-81-55 and Circuit Court in St. Charles County - alleged improper

disconnection of service along with injunction., approx 1980 or 1981

Lincoln County Sewer & Water, LLC

SR-2013-0321 and WR-2013-0322

Merriam Woods Water Company

WC-91-18 and WC-91-268 – quality of service

**WR-2014-0461 – Lake Region Water & Sewer Co.**  
**Cases with Testimony by James A. Merciel, Jr. (not all inclusive)**  
**January 2014**

Mill Creek Sewer System, Inc.

Proceeding by MO Attorney General in Circuit court in St. Louis County, Cause  
No. 611261, 1998 DNR water pollution violations

Miller County Water Authority

WC-95-252 and Circuit Court in Camden County approx 1995 - Complaint by  
Staff regarding operating without a certificate

Missouri American Water Company

SA-2012-0066 (Saddlebrooke)

WR-2011-0337

WR-2008-0311 and SR-2008-0312

WR-2007-0216

WC-2006-0345 - Dione C. Joyner, Complainant

WR-2003-0500

WR-2000-281

WR-97-237/SR-97-206

WT-97-227 / WA-97-45 / WC-96-441 - Complaint by Water District 2 regarding  
customers outside service area, and service area expansion

WA-97-46 – certificate case for St. Joseph wellfield

WR-95-205

WR-95-174

WR-93-212

WR-91-211

WR-89-265

WR-87-177

WR-85-16

Missouri Cities Water Company

WR-95-172/SR-95-173

WR-92-207

Proceeding in Circuit Court in Audrain County, CV192-40SCC approx 1992 city  
of Mexico attempted condemnation of water system

WR-91-172/SR-91-174

WR-90-236

WR-89-178/SR-89-179

WC-88-280 – William J. Fox d/b/a Fox Plumbing vs MO Cities,  
service line/main extension matter

WR-86-111/SR-86-112

WC-86-20 – Mexico Doctor's park, main extension

WR-85-157

WR-84-51

WR-83-15/SR-83-14

North Oak Sewer District, Inc.

SR-2004-0306

**WR-2014-0461 – Lake Region Water & Sewer Co.**  
**Cases with Testimony by James A. Merciel, Jr. (not all inclusive)**  
**January 2014**

Osage Water Co.

WA-99-256 (8/5/99) - Lakeview Beach certificate case

WC-2003-0134 (10/31/02) - Receivership case

Raytown Water Company

WR-92-85 / WR-92-88

WR-94-211

Southwest Village Water Company

WO-89-187 – quality of service

WC-89-138 (included testimony in Circuit Court in Greene County 1989)

St. Louis County Sewer Co.

SC-83-255 – complaints about stormwater inflow/infiltration

St. Louis County Water Company

WR-97-382

WR-96-263

WR-95-145

WR-94-166

WR-93-204

WR-91-361

WR-88-5

WR-87-2

WR-85-243

WC-84-29 – Dewey Eberhardt vs St. Louis County Water Co., fire protection

WR-83-264

WR-82-249

WC-79-251-Natural Bridge Development Corp vs. St. Louis County Water Co.,  
meter accuracy/testing

Stoddard County Sewer Co.

SO-2008-0289 – receivership, transfer, etc.

Suburban Water and Sewer Co.

Injunction hearing, Circuit Court in Boone County 07BA-CV02632, June 2007

WC-2007-0452

WC-84-19 – service issues

United Water Missouri

WR-99-326

Villa Park Heights Water Co.

WA-86-58

Warren County Water and Sewer Co. -

Circuit court case in Warren County CV597-134CC, September 1997 dispute  
with homeowners over a lot proposed to be a tank site

WC-2002-155 / SC-2002-260 - March 2002 Receivership case filed by the  
Office of the Public Counsel

West Elm Place Corporation

Circuit court lawsuit case in Jefferson County, approx 1988 Customer's lawsuit  
for damage from sewage backup

P 18, 19

DECLARATION  
of  
RESTRICTIVE COVENANTS



FOUR SEASONS  
LAKESITES, INC.



due.

6. Suspension. The Association shall not be required to transfer memberships on its books or to allow the exercise of any rights or privileges of membership on account thereof to any Owner or to any persons claiming under them unless or until all assessments and charges to which they are subject have been paid.

7. Assessments For Multiple Family Dwellings. Multiple family buildings shall be assessed only one (1) assessment, regardless of the number of units in said multiple family buildings, but in such an event, there shall be only one (1) Association membership card issued to the Owner or Manager thereof and members of his family; provided, that in the case of a multiple family building owned by two (2) or more persons, (whether as tenants in common, partners or shareholders in a corporation, but not including husband and wife), each Owner who also occupies a separate unit of said multiple family building, shall be liable for a separate assessment, which shall be a lien on the entire building, and each Owner - Occupant so separately assessed shall be issued a separate Association membership card issued for use only by said Owner - Occupant and members of his family; provided further, that the Developer, in its contract for sale of property for multiple family development, may cause additional assessments to be levied on the multiple family building to be constructed on such property, and in such an event, the Owner of such multiple family property will be liable for such additional assessment.

#### VIII. PROVISIONS WITH RESPECT TO DISPOSAL OF SANITARY SEWAGE:

No outside toilet shall be permitted. No sanitary waste shall be permitted to enter the lake and all sanitary installations must conform with the recommendations of the Developer, its successors and assigns, the County and State Boards of Health, and the Missouri Department of Natural Resources ("DNR".)

#### IX. WATER SYSTEM AND SEWAGE TREATMENT SYSTEM:

A. The Owner of each lot agrees to pay the Owner of the water works system to be constructed within the Development, a minimum monthly availability charge for water, water service and the accommodations afforded the Owners of said lots by said water works system, commencing upon the availability of water in a water works system distribution main provided for the lot and continuing thereafter so long as water is available for use, whether or not tap or connection is made to a water works system distribution main and whether or not said Owner actually uses or takes water. No

charge will be made to the lot Owners for the right to connect to the water system. Each lot Owner will bear the cost of the service line from his building into the water main. The said Owner or Owners of said water works system will be a privately owned public utility authorized by a Certificate of Public Convenience and Necessity issued by the State of Missouri Public Service Commission ("PSC") to operate the water works systems.

The aforesaid amounts of said availability charges, times and methods of payments thereof by said Owners, and other matters, shall be as provided in Schedules of Rate and Rules, Regulations and Conditions of Services for Water Services filed and published by said public utility or utilities which said Missouri PSC, or any successor Regulatory Body of the State of Missouri, in accordance with law and passed to file or formally approved by said PSC as the then effective Schedule of Rates and Rules, Regulations and Conditions of Service of said public utility or utilities, or if not so provided, as determined by the Owner of the water works system. The amounts of said availability charges and other charges are subject to change hereafter by order of the said Missouri PSC, or its successors, in accordance with then existing law and the structure of said availability charges are likewise and in the same manner subject to change from availability rates to another type of rate or rates.

Unpaid charges shall become a lien upon the lot or lots to which they are applicable as of the date the same become due. Nothing in this paragraph shall be construed as a limitation on the rights of any such public utility to sell and assign in accordance with law its property and assets to a governmental subdivision of the State of Missouri.

Prior to the construction of the central water system lot owners who wish to build at that time may drill individual wells. Upon completion of the central water system serving these lots the use of individual wells must be discontinued and connection must be made to the central water system. Individual wells will be prohibited after completion of the central water system.

B. No water system will be provided by the Developer to the Ridgcrest Subdivision. All references in paragraph A. of Article IX of this Declaration shall not apply to the Ridgcrest Subdivision. Each lot Owner within said subdivision will be required to install his own well for water supply.

C. Plan for Sewage Treatment. The Association has adopted a plan for sewage treatment by use of individual treatment facilities or other methods of sewage treatment by the Development and the plan has been approved by the Missouri DNR. The Association administers the plan. The following provisions apply to the implementation and administration of said plan:

0681-0760

P 5,6

DONNIE SHELLING  
CAMDEN COUNTY  
RECORDER OF DEEDS

2009 JUL 29 P 1:43 PM

P.C.S. 15 s 66

DEPUTY *Omuller*



Space above this line reserved for Recorder of Deeds

*First Title*

This instrument was prepared by:  
Summers Compton Wells PC  
Carol Stanton Flaia  
8909 Laeue Road  
St. Louis, MO 63124

After recording return to:  
First Title Insurance Agency

COVER PAGE

Document Title: AMENDMENT TO THE THIRD AMENDED AND RESTATED  
DECLARATION OF RESTRICTIVE COVENANTS  
RELATING TO WATER AND SEWER SYSTEMS

Grantor: Four Seasons Lakesites, Inc.  
a Missouri corporation

Grantor's Address: P.O. Box 430  
Lake Ozark, MO 65049

Grantee: Four Seasons Lakesites, Inc.  
a Missouri corporation

Grantee's Address: 315 Four Seasons Dr.  
P.O. Box 430  
Lake Ozark, MO 65049

Legal Description: See Attached Exhibit "A"



WHEREAS, by First Supplemental Indenture dated June 21, 1972, recorded in Book 168, Page 668, Declarant may amend this Declaration at any time until such time as all Lots in the Development have been sold.

WHEREAS, fewer than all of the Lots in the Development have been sold and Declarant desires to further amend and restate this Declaration.

WHEREAS, Article IX of the Declaration, "Water System and Sewage Treatment System," no longer adequately or accurately addresses the water and sewer treatment systems in the Development, the role of the Missouri Public Service Commission or the laws of the State of Missouri and as such, Declarant desires to remove Article IX from the Declaration and place certain covenants and restrictions relating to water and sewer systems within the Development in this Water and Sewer Amendment.

NOW, THEREFORE, Declarant hereby amends this Declaration as follows:

1. Removal of Article IX. Article IX of the Declaration, titled "Water System and Sewage Treatment System," is hereby removed in its entirety from the Declaration and replaced with the following language:

#### IX. WATER AND SEWER SYSTEMS.

All provisions relating to Water and Sewer Systems and treatment are set forth in the Amendment to Declaration dated July 15, 2009, recorded in the Office of the Recorder of Deeds of Camden County, Missouri and the Office of the Recorder of Deeds of Miller County (the "Water and Sewer Amendment"). All provisions of the Water and Sewer Amendment shall survive the recording of any amendment to the Declaration.

2. Definitions. The terms used in this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as follows:

2.1 "ACC" means the Architectural Control Committee of the Association.

2.2 "Assessment" means all assessments levied against any Lot in accordance with the Declaration, now or as amended.

2.3 "Association" means the Four Seasons Lakesites Property Owners Association, Inc., a Missouri mutual nonprofit corporation, its successors and assigns.

2.4 "Lot" means any numbered lot shown on the Plats of the Subdivision, and any lot designated herein or in a Supplemental Declaration for use as single family or residential multiple family purposes, other than those specifically designated for special purposes, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, and any improvements thereon. The term shall



### 3. Water Systems.

3.1 Shawnee Bend Lots -- Central Water System. The Owner of each Lot located on Shawnee Bend in a subdivision serviced by a central water system agrees to pay the owner of the central water system, or its assigns or designees, a monthly availability charge of Ten Dollars (\$10.00), unless the Owner of the Lot is contractually obligated to Developer, or Developer's assign, to pay a different amount. This availability fee shall commence upon the availability of water in a water system distribution main provided for the Lot and shall terminate when the Owner connects his Lot to the water system distribution main. Each Lot Owner will bear the cost of the service line from his building to the water main. Unpaid availability fees shall become a lien upon the Lot the date they become due.

3.2 Horseshoe Bend Lots -- Central Water System. The Owner of each Lot located on Horseshoe Bend agrees to pay the owner of the water works system to be constructed within the Development on Horseshoe Bend, a minimum monthly availability charge for water, water service and the accommodations afforded the Owners of said Lots by said water works system, commencing upon the availability of water in a water works system distribution main provided for the lot and continuing thereafter so long as water is available for use, whether or not tap or connection is made to a water works system distribution main and whether or not said Owner actually uses or takes water. No charge will be made to the Lot Owners for the right to connect to the water system. Each Lot Owner will bear the cost of the service line from his building into the water main. The said owner or owners of said water works system will be a privately owned public utility authorized by a Certificate of Public Convenience and Necessity issued by the State of Missouri Public Service Commission ("PSC") to operate the water works systems.

The aforesaid amounts of said availability charges, times and methods of payments thereof by said Owners, and other matters, shall be as provided in Schedules of Rate and Rules, Regulations and Conditions of Services for Water Services filed and published by said public utility or utilities which said Missouri PSC, or any successor Regulatory Body of the State of Missouri, in accordance with law and passed to file or formally approved by said PSC as the then effective Schedule of Rates and Rules, Regulations and Conditions of Service of said public utility or utilities, or if not so provided, as determined by the owner of the water works system. The amounts of said availability charges and other charges are subject to change hereafter by order of the said Missouri PSC, or its successors, in accordance with then existing law and the structure of said availability charges are likewise and in the same manner subject to change from availability rates to another type of rate or rates.

Unpaid charges shall become a lien upon the Lot or Lots to which they are applicable as of the date the same become due. Nothing in this paragraph shall be construed as a limitation on the rights of any such public utility to sell and assign in accordance with law its property and assets to a governmental subdivision of the State of Missouri.

3.3 Individual Water Systems. Prior to the extension of the central water system to a Lot on either Horseshoe Bend or Shawnee Bend, the Owner of the Lot may install an individual water system. Once the central water system is available to the Lot, the Owner must disconnect the individual water system and utilize the central water system.



3.4 Ridgecrest Water System. No water system will be provided by the Developer to the Ridgecrest Subdivision. Section 3.2 shall not apply to the Ridgecrest Subdivision. Each Lot Owner within Ridgecrest Subdivision will be required to install an individual water system for water supply, unless a water supply system becomes accessible to the Lot.

4. Sewer Systems.

4.1 Shawnee Bend Lots - Central Sewer System. The Owner of each Lot in a subdivision located on Shawnee Bend serviced by a central sewer system agrees to pay the owner of the central sewer system, or its assigns or designees a monthly availability charge of Fifteen Dollars (\$15.00), unless the Owner of the Lot is contractually obligated to Developer, or Developer's assign, to pay a different amount. This availability fee shall commence upon the availability of a sewer system distribution main provided for the Lot and shall terminate when the Owner connects his Lot to the sewer system distribution main. Each Lot Owner will bear the cost of the service line from his building to the sewer main. Unpaid availability fees shall become a lien upon the Lot the date they become due.

Prior to the extension of the central sewer system to such a Lot as described above, the Owner of the Lot may install an individual sewer system. Once the central sewer system is available to the Lot, the Owner must disconnect the individual sewer system and utilize the central sewer system.

4.2 Horseshoe Bend Lots - Plan for Sewage Treatment. The Developer adopted the Sewage Treatment Plan for sewage treatment by use of individual treatment facilities or other methods of sewage treatment in certain areas of the Development located on Horseshoe Bend (the "Plan Area") in lieu of or prior to central sewer service being available. The following provisions apply to the implementation and administration of said Sewage Treatment Plan. For purposes of Sections 4.2 and 4.3, each reference to an Owner shall mean an Owner of a Lot in the Plan Area.

a. Each Owner of a Lot containing a residence shall install an individual treatment facility, at the Owner's expense. Each such individual treatment facility must meet the specifications for such individual treatment facility set forth in the Sewage Treatment Plan.

b. It shall be the duty of each Owner of a Lot improved by a residence to construct an individual treatment facility in accordance with the specifications of the Sewage Treatment Plan so that it performs its stated functions and upon the failure of any Owner of a Lot containing a residence to maintain such an individual treatment facility, the Association may enter upon the Lot, take such action as is necessary to so construct and maintain such an individual treatment facility, and assess the Lot Owner for the expenses so incurred. Said Specific Assessment, if unpaid, shall be a lien upon the Lot and may be enforced by the Association in the manner set forth in the Declaration.

c. According to the Sewage Treatment Plan, the Association shall periodically maintain each Lot Owner's individual treatment facility by (i) collecting wastes on a regular basis; and (ii) inspecting and making or causing to be made necessary repairs (whether the facility is constructed under the Sewage Treatment Plan or is an existing unit described in

MILLER COUNTY, TUSCUMBIA  
DEBBIE WILES, RECORDER OF DEEDS

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2009 5497

Space above this line reserved for Recorder of Deeds

This instrument was prepared by:  
Summers Compton Wells PC  
Carol Stanton Fiala  
8909 Ladue Road  
St. Louis, MO 63124

After recording return to:  
First Title Insurance Agency

## COVER PAGE

Document Title: FOURTH AMENDED AND RESTATED DECLARATION OF  
RESTRICTIVE COVENANTS

Date of Document: October 1, 2009

Grantor: Four Seasons Lakesites, Inc.,  
a Missouri corporation

Grantor's Address: P.O. Box 430  
Lake Ozark, MO 65049

Grantee: Four Seasons Lakesites, Inc.,  
a Missouri corporation

Grantee's Address: P.O. Box 430  
Lake Ozark, MO 65049

Legal Description: See Exhibit "A"

The Association may also obtain, as a Common Expense, worker's compensation insurance, employer's liability insurance, directors' and officers' liability coverage, as well as flood, earthquake, hail and sewer back-up insurance and any other policy or endorsement that the Board, in its sole discretion, deems reasonably available or prudent.

The Association may also obtain, as a Common Expense, a fidelity bond or bonds, if generally available at reasonable cost, covering all persons responsible for handling Association funds. The Board shall determine the amount of fidelity coverage in its best business judgment. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification or nonrenewal.

**7.2. Damage and Destruction.**

(a) Immediately after damage or destruction to all or any part of the Development covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. The Association, through the Board, or in the case of a Sub-Association, the Sub-Association Board, shall determine in its best reasonable judgment whether to repair or reconstruct any damage or destruction. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

(b) If the Board, or in the case of a Sub-Association, the Sub-Association Board, determines that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and maintained by the Association or the Sub-Association, as applicable, in a neat and attractive, landscaped condition consistent with the applicable covenants.

MILLER COUNTY, TUSCUMBIA  
DEBBIE WILES, RECORDER OF DEEDS

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**8. NO PARTITION**



**2009 5497**

Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition or petition for adverse possession or easement by necessity unless the Development or such portion thereof have been removed from the provisions of this Declaration. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

**9. WATER AND SEWER SYSTEMS**

All provisions relating to Water and Sewer Systems and treatment are set forth in the Amendment to Third Amended and Restated Declaration of Restrictive Covenants Relating to Water and Sewer Systems dated July 22, 2009, recorded July 29, 2009 in Book 681, Page 760 in the Office of the Recorder of Deeds of Camden County, Missouri (the "Water and Sewer



Amendment"). All provisions of the Water and Sewer Amendment shall survive the recording of this Declaration.

10. CONDEMNATION

The Board shall have the authority to act on behalf of the Association if any part of the Common Area shall be taken or conveyed in lieu of and under threat of condemnation by any authority having the legal authority to condemn. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which Common Area Improvements have been constructed, the Board may in its sole discretion restore or replace such Common Area Improvements on the remaining land included in the Common Area to the extent available. Any such construction shall be in accordance with plans approved by the Board.

If the taking does not involve any Common Area Improvements, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed and used for such purposes as the Board shall determine.

11. ANNEXATION AND WITHDRAWAL OF PROPERTY

11.1. Annexation Without Approval of Membership. Until all Lots in the Development have been sold or otherwise conveyed by the Developer, Declarant may unilaterally subject to the provisions of this Declaration any real property which is contiguous or adjacent to the Development and the real property identified on Exhibit "E". In addition, Declarant may subject additional real property to this Declaration with the consent of the Board. Declarant may transfer or assign these rights to annex property, provided that the transferee or assignee is a parent or subsidiary of or is affiliated with Declarant and that such transfer is memorialized in a written, recorded instrument executed by Declarant. Nothing in this Declaration shall be construed to require Declarant or any successor to annex or develop any of the property in any manner whatsoever.

Such annexation shall be accomplished by filing a Plat and a Supplemental Declaration in the land records of Camden County, and if appropriate, Miller County, Missouri, describing the property to be annexed and specifically:

- (a) describing the real property being annexed and designating the permissible uses thereof;
- (b) setting forth any new or modified restrictions or covenants which may be applicable to such annexed property, including limited or restrictive uses of Common Areas; and

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Peaceful Valley Service Company For Peaceful Valley Lake Estates  
Name Of Issuing Corporation Community, Town, or City  
Gasconade County, Missouri

Rules and Regulations Governing Rendering of Water Service	
<b><u>SCHEDULE OF RATES</u></b>	
Availability: The Company holds itself out to provide water for distribution at retail only and no sales of water for re-distribution shall be made. Otherwise, service is available to any customer adjacent to the Company's water distribution mains using standard water service.	
<b><u>General Rates</u></b>	
Residential or Domestic Use:	\$29.24 per quarter
Commercial:	\$29.24 per quarter
Commercial with Restaurant:	\$55.58 per quarter
Yard Hydrants in Parks-Beaches-Camping Areas:	\$14.64 per quarter
Availability Charge:	\$ 8.16 per quarter
The availability charge is applicable where the Company has a water main located adjacent to a lot or lots in Peaceful Valley Lake Estates Subdivision and the owner of said property is subject to a contract agreement with or an assignment to the Company, wherein it is agreed that the property owner will pay to the Company an availability charge until a water service line is connected to the property. At the time a service line is connected, the other rates in this tariff will apply.	
As a condition of service, a property owner will be required to pay any availability charge owed since the effective date of this provision (July 1, 1985), before the Company is required to provide water service.	
* Indicates new rate or text + Indicates change	

DATE OF ISSUE March 23, 2009

DATE EFFECTIVE May 7, 2009

ISSUE BY President, 3408B Lakeshore Drive, Owensville, MO 65066

Peaceful Valley Service Co.  
 Informal Rate/Certificate Case  
 Tracking Number WR-2009-0145  
 Test Year Ending 09/30/08 update to 12/31/08  
 Rate Revenue Feeder Schedule - Water

Line Number	A Description	Residential 5/8"		Availability Charge 5/8"	
		B Amount	C Amount	D Amount	E Amount
1	<u>Customer Charge Revenues:</u>				
2	Customer Number	170		391	
3	Bills Per Year	4		4	
4	Customer Bills Per year	680		1,564	
5	Current Customer Charge	\$32.25		\$9.00	
6	Annualized Customer Charge Revenues		\$21,930		\$14,076
7	<u>Commodity Charge Revenues:</u>				
8	Total Gallons Sold	0		0	
9	Less: Base Gallons Included In Customer Charge	0		0	
10	Commodity Gallons	0		0	
11	Block 1, Commodity Gallons per Block	0		0	
12	Block 1, Number of Commodity Gallons per Unit	0		0	
13	Block 1, Commodity Billing Units	0.00		0.00	
14	Block 1, Existing Commodity Charge	\$0.00		\$0.00	
15	Block 1, Annualized Commodity Charge Rev.		\$0		\$0
16	<b>Total Annualized Water Rate Revenues</b>		<b>\$21,930</b>		<b>\$14,076</b>

Commodity Billing Units are based on the number of commodity gallons applicable to each block, divided by the tariff usage rate gallons (e.g. for tariff rate of \$2.50 per 1,000 gallons of usage, the commodity gallons for that rate would be divided by 1,000 to arrive at the number of commodity billing units.

Peaceful Valley Service Co.  
 Informal Rate/Certificate Case  
 Tracking Number WR-2009-0145  
 Test Year Ending 09/30/08 update to 12/31/08  
 Revenue Schedule - Water

	A	B	C	D	E	F	G
Line	Account	Revenue Description	Company/ Test Year	Adjustment	Jurisdictional	Jurisdictional	Adjusted
Number	(Optional)		Amount	Number	Adjustments	Allocation	Jurisdictional
Rev-1		ANNUALIZED REVENUES					
Rev-2		Annualized Rate Revenues	\$38,095	Rev-2	-\$1,056	100.00%	\$37,039
Rev-3		Miscellaneous Revenues	\$1,368	Rev-3	-\$147	100.00%	\$1,221
Rev-4		TOTAL ANNUALIZED REVENUES	\$39,463		-\$1,203		\$38,260

# PEACEFUL VALLEY SERVICE COMPANY

## Development of Tariffed Rates-Water

Agreement is to increase currently tariffed rates by a percentage equal to the agreed-upon overall revenue increase divided by the revenues generated by the currently tariffed rates.

Revenues Generated by Current Tariffed Rates	\$ 37,039
Agreed-Upon Overall Revenue Increase	\$ (3,454)
Percentage Increase Needed	-9.325%

Customer Rates		
Customer Class	Current Service Charge	Proposed Service Charge
Residential	\$ 32.25	\$ 29.24
Private Hydrants	\$ 32.25	\$ 29.24
Commercial	\$ 32.25	\$ 29.24
Private Hydrants	\$ 16.15	\$ 14.64
Availability Charge	\$ 9.00	\$ 8.16

UTILITIES DIVISION  
WATER/SEWER ROUTING SLIP

FILE # 8100742

FROM	TO	INITIAL	STATUS
Judge Fraas	✓	<i>MF</i>	Approved
Judge McCartney	✓	<i>LB</i>	Formal Objection Filed
Judge Dority	✓	<i>LD</i>	No Formal Objection Filed
Judge Bryant	✓	<i>JB</i>	Filed Without Suspension
Judge Shapleigh	✓	<i>JS</i>	Suspended

Mr. Persinger			Case No.
✓ Mr. Sankpill		<i>BIA</i>	
			Commissioner
Legal	✓	<i>T.B.</i>	
			Hearing Examiner

Company: I. H. Utilities, Inc.  
Date Received: June 23, 1981  
Date Effective: August 1, 1981  
Process By: July 31, 1981

Date of Agenda Consideration  
7-2

Purpose of Filing: This tariff was filed at the request of the Staff. This company has complete control of the contracts that allowed this availability charge. They were assigned to the water company by the developer of the area. Since the company receives this revenue and makes the charge, the Staff believes this charge should be made a condition of service from this point in time on. Accounting will advise the company as to the proper accounting of these funds. The Staff recommends approval.

Water and Sewer Department  
BLS.

*2nd rev 4A*

*tariff page only - no case*



UTILITIES DIVISION  
WATER/SEWER ROUTING SLIP

*File No. 8708 418*

FROM	TO	INITIAL	STATUS
JUDGE STEINMEIER	✓	<i>[Signature]</i>	Approved
JUDGE MUSGRAVE	✓	<i>[Signature]</i>	Formal Objection Filed
JUDGE MUELLER	✓	<i>[Signature]</i>	No Formal Objection Filed
JUDGE HENDREN	✓	<i>[Signature]</i>	Filed Without Suspension
JUDGE FISCHER	✓	<i>[Signature]</i>	Suspended

Mr. Persinger	✓	<i>[Signature]</i>	Case No.
Mr. Sankpill	✓	<i>absent</i>	
Mr. Henderson		<i>Walt 7-20-87</i>	Commissioner
Legal	✓	<i>9/2 7-20-87</i>	
			Hearing Examiner

Company: I.H. Utilities  
Date Received: April 13, 1987  
Date Effective: August 1, 1987  
Process By: July 31, 1987  
Purpose of Filing:

Date of Agenda Consideration

*7/29/87*

I.H. Utilities filed to increase water rates charged to its customers under the Commission informal procedure.

The Staff has reviewed the books, records and operations of the Company and recommends that the attached tariff be approved for water service rendered on and after August 1, 1987. The Staff is working with the Company to increase water pressure at the higher elevation in the system.

	Current Rate	Proposed Rate
1st 4,000 gallons	\$6.50	\$7.56
All over 4,000	.75	1.17
Minimum	6.50	7.56

Last rate increase 11/15/79

Attached:

- |                          |                               |
|--------------------------|-------------------------------|
| 1. Request from Company  | 5. Letter to customers        |
| 2. Proposed tariffs      | 6. Position of Public Counsel |
| 3. Current tariff        | 7. 3 letters from customers   |
| 4. Accounting workpapers |                               |

I. H. UTILITIES  
#8700418

	Expenses as Adjusted	To Availability	Total Expenses	Minimum Charge	Commodity Charge
Labor	\$ 7,242		\$ 7,242	\$ 2,414	\$ 4,828
Adm. Salary	9,354		9,354	6,236	3,118
Power	3,565		3,565		3,565
Maint.	5,388	\$ 2,018	3,370	100	3,270
Office Supplies	3,984		3,984	3,984	
Transportation	2,111		2,111	111	2,000
Insurance	420		420		420
Other Taxes	3,526	781	2,745	915	1,830
Depreciation	6,905	825	6,080	2,027	4,053
Taxes	919		919		919
Return	<u>18,571</u>	<u>3,000</u>	<u>15,571</u>	<u>5,109</u>	<u>10,462</u>
Total Exp.	\$ 61,985	\$ 6,624	\$ 55,361	\$ 20,896	\$ 34,465

Minimum Charge:  $\frac{7260}{\$20,896 \div (605 \times 12) = \$2.88 + 4.68 = 7.56}$  (includes 4,000 gallon)

Commodity Charge:  $\$34,465 - \$378* = \$34,087 \div 29,040 \text{ M Gallons} = \$1.17$

\* Yard Hydrant Revenue

	Current Rate	Proposed Rate	
Usage 4,000 gallons	\$ 6.50	\$ 7.56	16% Increase

Last increase 1979



BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of Lake Region Water & Sewer )  
Company's Application to Implement a General )  
Rate Increase in Water and Sewer Service )

Case No. WR-2013-0461

AFFIDAVIT OF JAMES A. MERCIEL, JR.

STATE OF MISSOURI )  
 ) ss  
COUNTY OF COLE )

James A. Merciel, Jr., of lawful age, on his oath states: that he has participated in the preparation of the foregoing Surrebuttal Testimony, in question and answer form, consisting of 10 pages and 4 Schedules, to be presented in the above case; that the answers in the foregoing Surrebuttal Testimony were given by him, that he has knowledge of the matters set forth in such answers; and that such answers are true to the best of his knowledge and belief.

  
James A. Merciel, Jr.

Subscribed and sworn to before me this 31<sup>st</sup> day of January 2014.

  
Notary Public

