

THIRD PARTY BENEFICIARY AGREEMENT

THIS AGREEMENT entered into this the 26th day of November, A. D. 1962, by and between SOUTHERN GULF UTILITIES, INC., a Florida corporation, hereinafter referred to as the "Company", and

THE EXCHANGE BANK OF PALATKA, Palatka, Florida, a State Banking Institution, hereinafter referred to as the "Representative",

W I T N E S S E T H :

WHEREAS, the Company is now the owner of certain property more fully described in Schedule "A", attached hereto, upon which is located the Company's water supply and/or sewage system or upon which there is being constructed by the Company and will be located a water supply and/or sewage system; and,

WHEREAS, the Company warrants that all the property described in Schedule "A" as being owned and as being served, as well as all water supply systems hereinafter acquired by the Company and made a part thereof shall be made subject to this Agreement by recordation of appropriate covenants, reservations, restrictions, or conditions in such manner as is required by law to put all persons on notice that such properties have been subjected to the terms of this Agreement; and,

WHEREAS, the Company warrants that existing and future encumbrances, liens or other indebtedness, if any, to the title of the water supply systems and/or sewage systems now owned or hereafter acquired by the Company as set forth herein shall be subordinated and made subject to this Agreement; and,

WHEREAS, the Company intends to construct, operate and maintain said water supply system and/or sewage system for the purpose of supplying water and/or sewage collection and disposal service to buildings, residences and other improvements located in the areas and subdivisions described, and to areas adjacent to or in the vicinities of the said water supply system and/or sewage systems and for that purpose will construct, lay and maintain water storage and distribution facilities, water and sewage mains, lateral lines, manholes, pumping stations, and all other facilities and appurtenances necessary to maintain an adequate water supply for domestic consumption for the occupants of such buildings, residences, and other improvements in said areas and subdivisions and also necessary for the purpose of supplying sewage collection and disposal service to such buildings, residences and other improvements; and,

WHEREAS, one of the inducing factors to the granting of mortgage loans on properties, buildings, residences, and other improvements

in the areas to be served by the water supply systems and/or sewage systems owned by the Company as described in Schedule "A" attached hereto, by lenders and the insuring thereof under the National Housing Act and/or Servicemen's Readjustment Act of 1944, as amended, is that there will be continuous operation and maintenance of the water supply systems and/or sewage systems according to the approved standards set forth in this Agreement, and that rate charges by the Company for its services will be reasonable, and the Company is desirous of assuring that its rates will be reasonable and also assuring the continuance of the operation and maintenance of said water supply systems and/or sewage systems, for the benefit of the present and future owners of properties, buildings, residences, and other improvements, and mortgagees holding mortgages covering such buildings, residences, and other improvements;

NOW, THEREFORE, for and in consideration of the reliance upon this Agreement by the Representative, present and future owners of buildings, residences, and other improvements to be served by the water supply systems and/or sewage systems of the Company, and by mortgagees (who will make and hold mortgage loans on such buildings, residences and other improvements) and by the Federal Housing Administration and Veteran's Administration in insuring or guaranteeing respectively such loans, the Company and the Representative do hereby covenant and agree as follows:

SECTION I. (a) This Agreement is made not only with the Representative in its individual capacity but also as the representative of and for the benefit of the present and future owners or occupants of all and each of the properties, buildings, residences, and other improvements which are now or may hereafter be served by the water supply systems and/or sewage systems of the Company, as well as the holders of any mortgage and mortgages covering any of such buildings, residences, and other properties and improvements.

(b) Any firm, person, association, governmental agency, or corporation (1) served by the water supply systems and/or sewage systems of the Company, or (2) holding any mortgage on the property connected to the said systems or either of them, is hereby granted a right and privilege, and is hereby authorized in its own name and on its own behalf or on behalf of others for whose benefit this Agreement is made, to institute and prosecute any suit at law or in equity in any court having jurisdiction of the subject matter, to interpret and enforce this Agreement or any of its terms and provisions, including, but not limited to, suits for specific performance, mandamus, receivership and injunction.

SECTION II. (a) The Company covenants and agrees that it shall supply at all times and under adequate pressure for the use of each of the properties duly connected to its water supply systems a sufficient quantity of water to meet the reasonable needs of each of the properties duly connected to said water systems. Such water shall be of the quality and purity as shall meet the standards recommended by the "Public Health Service Drinking Water Standards", promulgated by the United States Public Health Service, Federal Security Agency, February 5, 1946, and the water shall be treated in the manner necessary to assure its being of the quality and purity recommended in the above-mentioned standards, and also so as to produce water

without excessive hardness, corrosive properties, or other objectionable characteristics making it unsafe or unsuitable for domestic and ground use or harmful to any or all pipes within and/or without the buildings, residences, or other improvements. Records of any and all tests conducted in connection with said water supply systems shall be kept as permanent records by the Company and said records shall be open to inspection by the State Board of Health of the State of Florida and the owners of the properties in the subdivisions. The said Board of Health and/or its agents shall at all times have access to the water supply systems of the Company to conduct any and all tests as said Board shall determine necessary to ascertain compliance with the said Standards and characteristics. In any event, the Company shall have said Board make such analyses at least quarterly and the Company shall pay all costs and expenses in connection therewith. In the event said Board shall determine that the purity of the water does not meet the aforesaid Standards, the Company shall immediately at its sole cost and expense make any adjustment, repair, installation or improvements to its facilities that shall be necessary or required or recommended by said Board to bring the purity of the water up to the said Standards.

(b) The Company further covenants and agrees that it shall provide at all times for each of the buildings, residences, and other improvements constructed in the areas and subdivisions served by the sewage systems of the Company sewage service adequate for safe and sanitary collection, treatment and disposal of all domestic sewage from said building, residences and other improvements. The Company further shall operate and maintain the sewage systems, including the sewage treatment plants, in a manner so as not to pollute the ground, air, or water in, under or around said areas or subdivisions with improperly or inadequately treated sewage, or with noxious or offensive gases or odors. The Company further agrees to operate the systems in accordance with regulations and recommendations of the State Board of Health and to produce an effluent of a quality satisfactory to the State Board of Health and any and all other public authorities having jurisdiction over such matters. Records of any and all tests conducted in connection with the systems shall be kept as permanent records by the Company and said records shall be open to inspection by the State Board of Health of the State of Florida and the owners of the properties in the areas and subdivisions. The said Board of Health and its agents shall at all times have access to the systems of the Company to conduct any and all tests as said Board shall determine necessary to ascertain compliance with the said regulations and recommendations. In the event said Board shall determine that the operations of the systems do not meet the said regulations and recommendations, the Company shall immediately, at its sole cost and expense, make any adjustment, repair, installation or improvement to its facilities that shall be necessary or required or recommended by said Board to bring the operation of the system up to the said regulations and recommendations.

SECTION III. The Company agrees to maintain said water plant and water distribution facilities and/or sewage collection and disposal system at all times in good order and repair so that satisfactory water and sewage collection and disposal service as provided in the

foregoing paragraphs may be supplied to each of the said buildings, residences and other improvements in said areas or subdivisions in the quantity and in the quality provided in the foregoing paragraphs. The water plant and distribution system and/or the sewage collection and the disposal system shall be open for inspection at all times by the agents of the Florida State Board of Health.

SECTION IV. (a) The Company reserves and has the right to establish and collect as a charge or charges for water furnished and consumed by the owners or occupants of each of the buildings, residences and other improvements the initial rates described in Schedule "B" attached hereto and made a part hereof. The Company shall have the right to install on the premises of each of the individual buildings, residences and other improvements a water meter to be maintained by the Company through which all water supplied to the consumer shall pass and to which the Company shall have access at reasonable times for the purpose of taking meter readings and keeping said meters in repair.

(b) The Company reserves and has the right to establish and collect as a charge or charges for sewage service provided to the owners or occupants of each of the buildings, residences and other improvements served by the Company, the initial rates as shown in Schedule "C" attached hereto and made a part hereof.

SECTION V. In the event the Company should fail to operate and maintain the water supply system and/or the sewage collection and disposal system in the manner and under the conditions specified herein (failure due to Acts of God, natural disasters or other causes beyond the control of the Company, including labor troubles or strikes, excepted) or in the event the Company collects or attempts to collect from the consumers of water or from the users of the sewage collection and disposal system charges in excess of the rate or rates specified or provided for in this Agreement, then and in either of such contingencies, if such default shall continue for a period of thirty (30) days (or for a period of two (2) days in the event such default consists of a shut down of the water or sewer plant or suspension of water or sewage services, except for the causes above set forth) after written notice to the Company by any consumer, mortgagee, or any person for whose benefit this contract is made, then and in such event, any person for whose benefit this contract is made, may enforce this Agreement by action, instituted for such purpose in any Court of competent jurisdiction and any such action shall be entitled as a matter of right to the entry of an Order Appointing a Receiver or other officer appointed by the Court to take immediate possession of the water system and/or sewage collection disposal system of the Company for the purpose of operating and maintaining the same with the full right to hold, use, operate, manage and control the same for the benefit of the parties for whom this Agreement is made, with full right to collect the charges for services at rates not in excess of those specified or provided for in this Agreement. Such receiver or other officer of the Court, during the period of its operation, shall be entitled to such reasonable compensation and expenses, including reasonable attorneys' fees, as may be determined by the Court.

\* Not applicable as no sewer service contemplated under this agreement.

SECTION VI. The Company may establish, amend or revise from time to time and enforce Rules and Regulations for Water Service and Rules and Regulations for Sewer Service, or rules and regulations covering both water supply and sewer service, and covering the furnishing of water supply service and sewer service within said areas or subdivisions, provided, however, all such rules and regulations established by the Company from time to time shall at all times be reasonable and subject to such regulations as may now or hereafter be provided by law; and provided further that no such rule or regulation so established, amended or revised shall be inconsistent with the requirements of this Agreement nor shall the same abrogate any provision hereof. Any such rules and regulations established, amended, revised, and enforced by the Company from time to time in the future shall be binding upon any owner or occupant of any of the property located within the boundaries of such areas or subdivisions, the owner or occupant of any building, residence, or other improvement constructed or located upon such property and the user or consumer of any water supply service and/or sewer service.

SECTION VII. Changes in the initial rates described in Section IV hereof may be proposed by the Company and by third party beneficiaries of this Agreement in the following manner:

If within ninety (90) days after notice to the Representative and to all parties connected to the water supply systems and/or sewerage systems of a rate change proposed by the Company, not more than one-third of such parties have signified in writing their opposition to such proposed rate change, the Company may forthwith establish such new rates. If more than one-third of such parties signify, in writing, their opposition to a rate change proposed by the Company, or if more than one-third of such parties propose in writing a rate change which the Company opposes, and the parties can not negotiate an agreement within ninety (90) days to the reasonableness of the new rates, then the matter of the reasonableness of such new rates shall be referred to a board of arbiters selected as follows: The Company shall designate one arbiter, the objecting parties shall designate one arbiter, and the two arbiters thus selected shall choose a third arbiter. The three arbiters shall make their written recommendations to the parties to the dispute as to the reasonableness of the new rates within ninety (90) days after the reference of the dispute to them. Written notice of the hearing of the dispute by the arbiters shall be given to the Company and to all objecting parties. All proceedings before the arbiters shall be recorded in writing. Either side to the arbitration may present written objections to the recommendations within thirty (30) days after the decision. If no written objections are made, it shall be considered that all parties have agreed that the new rates recommended by the arbiters are reasonable. If written objections are filed by either side, the question of the reasonableness of the new rates shall be the subject of review by a court of competent jurisdiction in appropriate legal proceedings initiated for such purpose. In the event of arbitration or court proceedings the proposed change of rates shall be held in abeyance and shall not become effective until the conclusion of such proceedings.

SECTION VIII. Notwithstanding any provisions of this Agreement no third party beneficiary shall have or claim to have any right, title, lien, encumbrance, interest, or claim of any kind or character whatsoever in and to the Company's water supply systems and/or sewage systems, or properties and facilities, and the Company may mortgage, pledge or otherwise encumber, or sell or otherwise dispose of, any or all of such water supply systems and/or sewage systems, properties and the facilities without the consent of such third parties. The words "properties and facilities" as used in this Section shall not only include physical properties and facilities but all real, personal and other property of every kind and character owned by the Company and used, useful, or held for use in connection with its water supply systems and/or sewage systems, including revenues and income from the users of water and sewage services, cash in bank and otherwise; provided, however, that this Agreement as set forth herein shall be binding upon all successors and assigns of the Company.

SECTION IX. All notices provided for herein shall be in writing or by telegram, and if to Company, shall be mailed or delivered to Company at 7630 Biscayne Boulevard, Miami, Florida, and if to parties for whose benefit this contract is made shall be mailed or delivered to their last known business or residential addresses.

SECTION X. (a) The covenants, reservations, restrictions or conditions herein set forth are and shall be deemed to be covenants, reservations, restrictions or conditions imposed and running with the land and properties now owned or hereafter owned and acquired by the Company, and limiting the use thereof for the purposes and in the manner set forth herein and shall be binding upon and shall inure to the benefit of the Company, its successors and assigns, and shall likewise be binding upon and inure to the benefit of all parties who, in any manner whatsoever, shall acquire title to the Company's water supply systems and/or sewage systems, and the properties and facilities as defined in Section VIII hereof. To this end the Company shall make all water supply systems and/or sewage systems now owned or hereafter acquired subject to this Agreement by recordation of appropriate covenants, reservations, restrictions, or conditions in such manner as is required by Florida law to put all persons on notice that such water supply systems and/or sewage systems have been subjected to the terms of this Agreement and that the terms of this Agreement are deemed to be covenants, reservations, restrictions, or conditions imposed upon and running with the land and properties now owned or hereafter acquired by the Company.

(b) This Agreement shall also be binding upon and shall inure to the benefit of the Representative, its successors, and assigns, and as set forth in Section I hereof, all present and future owners or occupants of all and each of the properties, buildings, residences and other improvements which are now or may hereafter be served by the water supply systems and/or sewage systems of the Company as well as the holders of any mortgage or mortgages covering any such properties, building, residences, and other improvements, as well as the successors and assigns of all such present and future owners and occupants and holders of mortgages.



SECTION XI. This Agreement shall be governed by the laws of the State of Florida.

SECTION XII. This Agreement shall remain in full force and effect and for the benefit of all parties mentioned herein until either (a) the water supply systems and sewage systems described herein are taken over by governmental authority for maintenance and operation; or (b) other adequate water supply and sewage collection and disposal service is provided by a governmental authority through means other than the water supply systems and sewage systems owned by the Company; or (c) the rates, services, and operation of the Company are placed by law under the jurisdiction of a regulatory commission or other governmental agency or body empowered to fix rates and to which a consumer of the Company may seek relief. Upon the happening of any of the aforesaid events, this Agreement shall automatically terminate and, at the request of the Company, the Company and the Representative shall execute an instrument cancelling this Agreement.

IN WITNESS WHEREOF, the Company and the Representative have caused this Agreement to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this Agreement.

Signed, sealed and delivered  
in the presence of:

W. J. Johnston, Jr.  
Henry R. As  
As to Company

SOUTHERN GULF UTILITIES, INC.

By: William Siegel (SEAL)  
WILLIAM SIEGEL, Vice-President

ATTEST:

By: S. William Fuller (SEAL)  
S. WILLIAM FULLER, Asst. Secretary

THE EXCHANGE BANK OF PALATKA

Michael D. Tull  
Mildred L. Sandy  
As to Representative

By: William T. Pountney (SEAL)  
PRESIDENT

ATTEST:

By: S. H. H. H. (SEAL)  
CASHIER

STATE OF FLORIDA :

SS:

COUNTY OF DADE :

I, the undersigned Notary Public, do hereby certify that  
WILLIAM SIEGEL and S. WILLIAM FULLER  
Vice- President and Asst. Secretary, respectively, of SOUTHERN GULF  
UTILITIES, INC., a Florida corporation, and who as such officers  
executed the foregoing Agreement, this day personally appeared before  
me and acknowledged that they executed said Agreement as such officers  
and attached the corporate seal of said corporation in the name of  
and for and in behalf of said corporation freely and voluntarily, for  
the uses and purposes therein expressed, and with full authority to  
so do.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed  
my official seal this 30th day of November, A. D., 1962.

My Commission  
Expires:

*Mary Lee*  
Notary Public, State of Florida at Large  
My Commission Expires Feb. 24, 1963.

STATE OF FLORIDA :

SS:

COUNTY OF Putnam :

I, the undersigned Notary Public, do hereby certify that  
*William T. Pennington* and *John A. Howard*  
*President & Cashier*, respectively of  
THE EXCHANGE BANK OF PALATKA, Palatka, Florida,  
a corporation organized and existing under the Laws of the State of  
*Florida*, the Representative, and who as such officers  
executed the foregoing Agreement, this day personally appeared before  
me and acknowledged before me that they executed the said Agreement as  
such officers and attached the corporate seal of said corporation in  
the name of and for and on behalf of said corporation, freely and  
voluntarily, for the uses and purposes therein expressed, and with full  
authority so to do.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed  
my official seal this 7th day of Dec., A. D., 1962.

My Commission  
Expires:

*My Commission Expires Jan. 11, 1963*  
Notary Public, State of Florida at Large  
Bonded by American Fire & Casualty Co.

*My Commission Expires Jan. 11, 1963*  
Notary Public



scanned from public records by:

GULLETT TITLE, INC.  
(904) 328-5106

OFFICIAL RECORDS

BOOK 98 PAGE 619

SCHEDULE "A"

TO THAT CERTAIN THIRD PARTY BENEFICIARY AGREEMENT  
ENTERED INTO BY AND BETWEEN SOUTHERN GULF UTILITIES,  
INC. AND/OR ITS SUBSIDIARIES AND THE REPRESENTATIVE  
DATED 26th DAY OF NOVEMBER A. D., 19 62 .

DESCRIPTION OF PROPERTY

Lot 8, Block C, RIVER GROVES SUBDIVISION, according  
to the Plat, recorded in Plat Book 4, at Page 105,  
of the Public Records of Putnam County, Florida,  
together with the water distribution system located  
thereon.

SCHEDULE "B"

TO THAT CERTAIN THIRD PARTY BENEFICIARY AGREEMENT  
ENTERED INTO BY AND BETWEEN SOUTHERN GULF UTILITIES,  
INC. AND/OR ITS SUBSIDIARIES AND THE REPRESENTATIVE  
DATED 26th DAY OF NOVEMBER A. D., 1962.

WATER SERVICE RATE SCHEDULE

EFFECTIVE: As of the date of the above described Third Party  
-Beneficiary Agreement.

In all territory served by SOUTHERN GULF UTILITIES, INC.  
from its central water plant and connected water distribution system  
as described in Schedule "A".

APPLICATION OF SCHEDULE:

This schedule is applicable to general water service to  
all residential consumers served. Two or more points of delivery to  
one consumer shall be considered as separate water services and bills  
separately calculated for each point of delivery.

MONTHLY RATE:

\$ 5.00 minimum charge per month for use of 3,000 gallons;  
.55 per 1,000 gallons for next 1,000 gallons.  
.45 per 1,000 gallons for next 3,000 gallons.  
.40 per 1,000 gallons for next 3,000 gallons.  
.25 per 1,000 gallons for all over 10,000 gallons.

The Company may establish, amend, revise and enforce from  
time to time or times to times in the future different rates or rate  
schedules reflecting rates lower or higher than those established  
above and when such is done such rates or rate schedules shall be  
those to be charged by the Company; however, any such lower or higher  
rates or rate schedules so established and enforced from time to time  
by the Company shall at all times be reasonable and subject to such  
regulation as may be provided by the Third Party Beneficiary Agreement  
or by law.

MONTHLY PAYMENT:

Bills shall be rendered at monthly intervals and are due  
and payable upon presentation.

(continued)

scanned from public records by:

GULLETT TITLE, INC.  
(904) 328-5106

OFFICIAL RECORDS

BOOK 98 PAGE 621

SCHEDULE "B"

Page 2

RULES AND REGULATIONS:

Service under this schedule is subject to orders of governmental bodies having jurisdiction in the premises and to the "Rules and Regulations for Water Service" of the Company, present and future, on file in the Company's office, which are hereby made a part hereof. In case of any conflict between any provision of this schedule and said "Rules and Regulations for Water Service" this schedule shall control.

A 48375

1:48 PM 21 DEC '62

FILED AND RECORDED IN PUBLIC  
RECORDS OF PUTNAM COUNTY, FLA.

*Don W. Hilde*  
CLERK OF CIRCUIT COURT

scanned from public records by:

GULLETT TITLE, INC.

(904) 328-5106

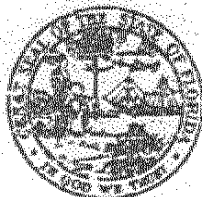
RE 6071 PAGE 378

OFFICIAL RECORDS

BOOK 206 PAGE 550

# State of Florida

Secretary of State



I, Tom Adams, Secretary of State of the State of Florida,  
Do Hereby Certify That the following is a true and correct copy of  
Certificate of Amendment to Certificate of Incorporation of  
SOUTHERN GULF UTILITIES, INC., changing its corporate name to  
ECOLOGICAL SCIENCE CORPORATION, a corporation organized and  
existing under the Laws of the State of Florida, and amending  
ARTICLE THIRD, filed on the 24th day of June, A. D., 1968, as  
shown by the records of this office.

Given under my hand and the Great Seal of the  
State of Florida at Tallahassee, the Capital,  
this the 1st day of July  
A.D. 1968.



Secretary of State

CERTIFICATE OF AMENDMENT  
OF

CERTIFICATE OF INCORPORATION  
OF

SOUTHERN GULF UTILITIES, INC. - - -

SOUTHERN GULF UTILITIES, INC., a corporation organized  
and existing under and by virtue of the laws of the State of  
Florida

DOES HEREBY CERTIFY:

1. That at a meeting duly convened and held,  
Board of Directors of said Southern Gulf Utilities, Inc.  
adopted resolutions setting forth proposed amendments to the  
Certificate of Incorporation of said Corporation, declaring  
its advisability and calling a meeting of the stockholders of  
said Corporation for consideration thereof.

2. That thereafter, pursuant to such call of the  
Board of Directors and notice, stating the time, place and  
purpose served upon or mailed to each stockholder of record  
entitled to vote twelve days before such meeting, a meeting of  
the stockholders of said Corporation was held, at which meeting  
the following resolutions adopting amendments proposed by the  
Board of Directors were offered:

RESOLVED, that the proposal of the Board  
of Directors that the Certificate of Incorporation  
of this Corporation be amended by changing the name  
of the Corporation be and it hereby is adopted and  
the Certificate of Incorporation of this Corporation  
is hereby amended by changing paragraph numbered  
"FIRST" of the Certificate of Incorporation so that  
said paragraph numbered "FIRST" as amended shall be  
and read as follows:

"FIRST: The name of the corporation  
(hereinafter called the "Corporation") is  
ECOLOGICAL SCIENCE CORPORATION".

FILED  
JUN 24 1 14 PM '68  
CLERK OF SUPREME COURT  
TALLAHASSEE, FLORIDA



scanned from public records by:

GULLETT TITLE, INC.  
(904) 328-5106

RESOLVED, that the proposal of the Board of Directors that the Certificate of Incorporation of this Corporation be amended by increasing the authorized Common Stock and creating a new class of Serial Preferred Stock be and it hereby is adopted and the Certificate of Incorporation of this Corporation is hereby amended by changing paragraph numbered "THIRD" of the Certificate of Incorporation so that said paragraph numbered "THIRD" as amended shall be and read as follows:

"THIRD. The total number of shares of all classes of stock which the Corporation shall have authority to issue is 11,000,000 shares, of which 1,000,000 shares shall be Serial Preferred Stock without par value (herein called the Preferred Stock), and 10,000,000 shares shall be Common Stock of the par value of \$.05 per share.

The designations, preferences, restrictions and qualifications of each class of stock of the Corporation are as follows:

A. Issuance of Preferred Stock in Series.  
The 1,000,000 shares of Preferred Stock may be divided into and issued from time to time in one or more series. The Board of Directors is vested with the authority by resolution to divide the shares of Preferred Stock into series, establish and designate series, issue shares in one or more series and, subject to the terms hereof, fix and determine the relative rights and preferences as between series, as to which rights and preferences there may be variations among others in respect of the following:

- (a) The type and rate of dividend, time of payment of dividends and date from which dividends shall be cumulative.
- (b) The price at and the terms and conditions on which shares may be redeemed.
- (c) The amount payable upon shares in event of involuntary liquidation.
- (d) The amount payable upon shares in event of voluntary liquidation.
- (e) Sinking fund provisions for the redemption or purchase of shares.
- (f) The terms and conditions on which shares may be converted, if the shares of any series are issued with the privilege of conversion.
- (g) Voting powers, if any.

Except as the series shall vary, all shares of Preferred Stock shall be identical.

B. Dividends. The holders of Preferred Stock of all series shall be entitled to receive, as and



when declared by the Board of Directors out of funds of the Corporation legally available therefor, dividends in stock, cash or otherwise at the respective rates provided for respective series of Preferred Stock. Such dividends shall be payable at such times and may be non-cumulative or cumulative from such dates as shall be provided in the resolutions of the Board of Directors creating any series of Preferred Stock. In the event they shall be cumulative, such dividends shall be cumulative (whether or not in any dividend period or periods there shall be surplus of the Corporation legally available for the payment of such dividends), so that if at any time full cumulative dividends upon the outstanding Preferred Stock of all series to the end of the then current dividend period shall not have been paid or declared and set apart for payment, the amount of the deficiency shall be fully paid, but without interest, either by redemption and the payment or deposit of the redemption price thereof or by dividends in the amount of such deficiency paid or declared and set apart for payment on each such series, before any sum or sums shall be set aside for or applied to the purchase or redemption of Preferred Stock of any series (either pursuant to any sinking fund provisions or otherwise) or the purchase of Common Stock, and before any dividends (except dividends payable in shares of Common Stock) shall be declared or paid or any other distribution ordered or made upon the Common Stock; provided, however, that any moneys theretofore deposited in any sinking fund provided for any series may thereafter be applied to the purchase or redemption of Preferred Stock of such series, whether or not at the time of such application full cumulative dividends upon the outstanding Preferred Stock of all series to the end of the then current dividend period shall have been paid or declared and set apart for payment. All dividends declared upon the Preferred Stock of the respective series outstanding shall be declared pro rata, so that the amounts of dividends declared per share on the Preferred Stock of different series shall in all cases bear to each other the same ratio that full cumulative dividends per share of such respective series bear to each other. Whenever in any dividend period dividends for the current and all past dividend periods shall have been paid or declared and set apart for payment upon all series of Preferred Stock and there shall then exist no default with respect to the sinking fund provisions for any series of Preferred Stock, dividends may be declared and paid upon the Common Stock as such dividends may from time to time be declared by the Board of Directors.

C. Liquidation. In the event of any liquidation, dissolution or other winding up of the Corporation, whether voluntary or involuntary, the holders of the Preferred Stock shall be entitled to receive the respective sums per share provided for the respective series of Preferred Stock, together with full cumulative dividends accrued and unpaid to and including the date of such liquidation, dissolution or winding up of the Corporation before any distribution or payment shall be made to the holders of Common Stock. After payment of such amount to the holders of Preferred Stock, the remaining assets of the Corporation shall be distributed among the holders of Common Stock of the Corporation. If upon any liquidation, dissolution or winding up the amount payable on or with respect to the Preferred

Stock of all series shall not be paid in full, the holders of shares of Preferred Stock of all series shall share ratably in any distribution of assets according to the respective amounts which would be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to the Preferred Stock of all series were paid in full. A merger or consolidation of the Corporation with one or more other corporations or a sale, lease, exchange, mortgage, pledge or other disposition of the business, property, assets or franchises of the Corporation shall under no circumstances be deemed a liquidation, dissolution or winding up.

D. Redemption. The Preferred Stock of each series shall be subject to redemption to such extent, in such amounts, on such dates, at such redemption prices and on such other terms and conditions as may be provided with respect to such series.

If less than all of the outstanding shares of any series of the Preferred Stock are to be redeemed, the shares to be redeemed shall be selected pro rata or by lot in such manner as the Board of Directors shall determine. Notice of intention of the Corporation to redeem shares of the Preferred Stock and of the date and place of redemption shall be mailed at least 30 days prior to the date designated for redemption to each holder of record of shares to be redeemed at his last known address as shown by the records of the Corporation.

If, on or before the redemption date specified in such notice, all funds necessary for such redemption shall have been deposited by the Corporation in trust with a bank or trust company doing business in The City of New York and having a capital, surplus and undivided profits as shown by its last published report to its stockholders aggregating not less than \$5,000,000, designated in such notice of redemption, for the pro rata benefit of the holders of the shares so called for redemption, with irrevocable instructions and authority to pay the redemption price to the holders of the shares upon surrender of certificates therefor, and if notice of redemption shall have been mailed to the holders thereof, then, notwithstanding that any certificate for the shares of the Preferred Stock so called for redemption shall not have been surrendered for cancellation, from and after the date of such deposit, all shares of the Preferred Stock with respect to which such deposit shall have been made shall no longer be deemed outstanding, and all rights with respect to such shares of the Preferred Stock so called for redemption shall forthwith upon such deposit cease and terminate, except only the right of the holders thereof to receive from such bank or trust company at any time after such deposit the applicable redemption price of such shares to be redeemed, against surrender of the certificates therefor, but without interest thereon, and except any conversion rights not theretofore expired. Such conversion rights, however, in any

event shall cease and terminate upon the date fixed for redemption or upon any earlier date fixed by the Board of Directors for the termination of such conversion rights. Anything herein contained to the contrary notwithstanding, said redemption price shall include an amount equal to full cumulative dividends on the Preferred Stock to be redeemed to the date fixed for the redemption thereof, and the Corporation shall not be required to declare or pay on such Preferred Stock to be redeemed, and the holders thereof shall not be entitled to receive, any dividends in addition to those thus reflected in the redemption price; provided, however, that the Corporation may pay in regular course any dividends thus reflected in the redemption price either to the holders of record on the record date fixed for the determination of shareholders entitled to receive such dividends (in which event, anything herein to the contrary notwithstanding, the amount so deposited need not include any dividends so paid or to be paid) or as a part of the redemption price upon surrender of the certificates for the shares redeemed. Any moneys so deposited in trust and unclaimed at the end of six years from the date fixed for such redemption shall be repaid to the Corporation upon its request after which repayment the holders of the shares so called for redemption shall look only to the Corporation for the payment thereof.

The term "full cumulative dividends" whenever used herein shall mean (whether or not in any dividend period, or any part thereof, in respect of which such term is used there shall have been net profits or net assets of the Corporation legally available for the payment of such dividends) that amount which shall be equal to dividends at the full rate fixed for such series as provided herein for the period of time elapsed from the date of issue of such series to the date as of which full cumulative dividends are to be computed (including the elapsed portion of the current dividend period), less the amount of all dividends, paid or deemed paid, upon shares of such series.

In the event of the issue of additional shares of Preferred Stock of any then existing series, all dividends paid on shares of Preferred Stock of such series prior to the issue of such additional shares of Preferred Stock, and all dividends declared and payable to holders of shares of Preferred Stock of such series of record on any date prior to the issue of such additional shares of Preferred Stock, shall be deemed to have been paid on the additional shares of Preferred Stock so issued.

Shares of any series of Preferred Stock which have been redeemed (whether through the operation of a sinking fund or otherwise) or purchased shall have the status of authorized but unissued shares of Preferred Stock of the same series and may be reissued as a part of the series of which they were originally a part, or, by resolution of the Board of Directors, may be changed into shares of another series of Preferred Stock created or to be created.

E. Sinking Funds. The Corporation shall set aside as a sinking fund for each series of Preferred Stock which is entitled to the benefits of a sinking fund, such amount as may be fixed by resolutions of the Board of Directors providing for the issue of any such series and the sinking fund for each such series shall be applied to the purchase

scanned from public records by:

GULLETT TITLE, INC.  
(904) 328-5106

RE 6071 PAGE 384

OFFICIAL RECORDS

BOOK 206 PAGE 556

or redemption of the shares of such series at the respective sinking fund prices so fixed by the Board of Directors for any such series upon the issue thereof. In the event that the Corporation shall fail to set aside any amount required by the provisions of any series of Preferred Stock as a sinking fund for the redemption of shares of such series, or shall fail to redeem shares of any series of the Preferred Stock as required by the provisions thereof, then and in such event, until such deficiency and all deficiencies for prior periods shall be made up in full, no dividends (except dividends payable in shares of Common Stock) shall be paid or declared, or other distribution made, on the Common Stock nor shall any shares of Common Stock be redeemed or purchased.

F. Voting Powers. The holders of Preferred Stock shall not be entitled to notice of, or to vote at, any meeting of stockholders for the election of directors, or otherwise, except as provided by law or except as may otherwise be provided in the resolutions of the Board of Directors creating any series of Preferred Stock. Except as aforesaid, all voting powers shall be vested in the holders of the Common Stock and each share of Common Stock shall be entitled to one vote.

Cumulative voting shall not be allowed in the election of directors.

G. Conversion. Any series of Preferred Stock may be issued by resolutions of the Board of Directors which shall be convertible into shares of any other class or into shares of any series of Preferred Stock or any other class, but shares shall not be converted into shares with par value unless that part of the stated capital of the Corporation represented by such shares is, at the time of conversion, at least equal to the aggregate par value of the shares into which the shares are to be converted.

RESOLVED, that the proposal of the Board of Directors that the Certificate of Incorporation of this Corporation be amended with respect to indemnification of directors, officers and others be and it hereby is adopted and the Certificate of Incorporation of this Corporation is hereby amended by changing paragraph numbered TENTH (7) of the Certificate of Incorporation so that said paragraph numbered TENTH (7) as amended shall be and read as follows:

"(7)(a) The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines



scanned from public records by:

GULLETT TITLE, INC.

(904) 328-5106

OFFICIAL RECORDS

BOOK 206 PAGE 557

and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(b) The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to have been guilty of negligence or misconduct in the performance of his duty to the Corporation.

(c) To the extent that a director, officer, employee or agent of the Corporation or any person serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) and (b), or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

(d) Except as provided in subsection (c), any indemnification under subsections (a) and (b) (unless ordered by a court) shall be made by the Corporation upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in subsections (a) and (b). Such determination shall be made (1) by the

scanned from public records by:

GULLETT TITLE, INC.

(904) 328-5106

OFFICIAL RECORDS

BOOK 206 PAGE 558

Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (2) if such a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (3) by the stockholders. Any determination made by the Board of Directors under this Article shall be final and conclusive on all persons whomsoever.

(e) Expenses incurred defending a civil or criminal action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Directors in the manner provided in subsection (d) upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount unless the Board of Directors pursuant to subsection (d) subsequently determines that he is entitled to be indemnified by the Corporation.

(f) The indemnification provided by this section shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any By-Law, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(g) The Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status, as such, whether or not such person would be entitled to indemnification against such liability under the provisions of this Article.

3. That a vote of the stockholders of record entitled to vote, present in person or represented by proxy, was taken for and against each resolution so offered and the amendment therein contained, and upon the canvassing of the votes it appeared that stockholders of record holding stock in the Corporation entitling them to exercise at least a majority of the voting power, namely, the holders of 780,343 shares on the change of name, 779,072 to increase the authorized Common Stock, 729,477 shares to create a new issue of Serial Preferred Stock and 780,039 shares to amend the indemnification provisions, out of a total of 1,243,799



scanned from public records by:  
GULLETT TITLE, INC.  
(904) 328-5106

OFFICIAL RECORDS  
BOOK 206 PAGE 559

shares of the Common Stock of the Corporation issued and out-  
standing and entitled to vote, being the only authorized class  
of stock, had voted in favor of the amendments.

IN WITNESS WHEREOF, said SOUTHERN GULF UTILITIES, INC.  
does hereby make this certificate under its corporate seal and the  
hand of HAROLD P. KOENIG, its President and the hand of  
S. WILLIAM FULLER, its Secretary, and the said President and  
the said Secretary hereby hereunto set their hands and cause the  
corporate seal of the corporation to be hereunto affixed this 18th  
day of June, 1968.

SOUTHERN GULF UTILITIES, INC.

By

*Harold P. Koenig*  
President

By

*S. William Fuller*  
Secretary

(CORPORATE SEAL)

Scanned from public records by:  
**GULLETT TITLE, INC.**  
 (904) 328-5106

OFFICIAL RECORDS  
 BOOK 206 PAGE 560

STATE OF FLORIDA )  
 COUNTY OF DADE ) ss.:

I, Barbara Miller, a notary public

in and for the state and county aforesaid, hereby certify that  
 HAROLD P. KOENIG and S. WILLIAM FULLER, personally known to me  
 and known to me to be President and Secretary respectively,  
 of SOUTHERN GULF UTILITIES, INC., a corporation organized and  
 existing under the laws of the State of Florida, and who as  
 such officers executed the foregoing certificate of amendment  
 this day, personally appeared before me and acknowledged before  
 me that they executed said certificate of amendment as such  
 officers, in the name of and for and on behalf of said corpora-  
 tion freely and voluntarily for the uses and purposes therein  
 expressed, and with full authority so to do.

IN WITNESS WHEREOF, I have hereunto set my hand  
 and official seal this 18th day of June, 1968.

Barbara Miller  
 Notary Public

Notary Public, State of Florida at Large  
 My Commission Expires Dec. 26, 1968  
 Bonded by Transamerica Insurance Co.

FILED  
 JUN 18 6 11 AM '68  
 93011

State of Florida, County of Dade.  
 This instrument was first recorded Dec 27, 1967  
 1968 11:10 AM and duly recorded in OFFICIAL RECORDS  
 Book 407, Page 371. This is 42048  
 A. R. LEATHERMAN  
 Clerk of the Court