

State of Florida



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: June 20, 2003
TO: Division of Commission Clerk and Administrative Services
FROM: Tony Sargent, Professional Accountant, Division of Economic Regulation
RE: Docket No. 030166-SU - Complaint against KW Resort Utilities by Coral Hammock, LLC in Monroe County

The attached letter was sent to the Division of Economic Regulation. Please include it in the official docket file for Docket No. 030166-SU.

Thank you.

RECEIVED FPSC
 03 JUN 20 PM 1:22
 COMMISSION
 CLERK

- AUS _____
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DOCUMENT NUMBER - DATE

05529 JUN 20 03

FPSC-COMMISSION CLERK

KW RESORT UTILITIES

P.O. Box 2125
Key West, Florida 33045
Telephone (305) 294-9578
Facsimile (305) 294-1212

6/18/03

Mr. Everett Atwell
Coral Hammock LLC
210 S. Parson Ave
Suite 12
Brandon, FL 33511

REGISTRATION SERVICE
03 JUN 20 AM 10:36
ECONOMIC REGULATION

Dear Mr. Atwell:

On Feb 14, 2003, your company filed a complaint, with the Public Service Commission (Docket # 030166-SU) stating that you had many concerns with the Developers Agreement that was executed on Jan 1st, 2003.

On May 1st, 2003, KW Resort Utility forwarded Coral Hammock LLC the amended developers agreement, approved by the PSC, that addressed many of your concerns and your company has not yet responded. During this time the Utility has done everything requested by you and your engineers, from design modifications, to DEP and County permitting assistance.

Enclosed is a copy of your amended Developers Agreement in which the Utility would like your comments or signature to finalize the issues that were brought to the attention of the Utility and the PSC.

The Utility is pleased to see the progress of your vacuum sewage collection system. Weiler Engineering has been conducting and will continue conducting inspections on behalf of the Utility.

To avoid any unnecessary delays in connection to the Utility's system please call with comments or sign the amended Developers Agreement.

Sincerely,

Doug Carter
GM KW Resort Utility
305-294-5232

Cc: Troy Rendell, Florida Public Service Commission

UTILITY AGREEMENT

THIS UTILITY AGREEMENT (Agreement), dated as of the 18th day of June 2003, by and between KW Resort Utilities, a Florida corporation, having its office(s) at 6450, Key West Florida 33040, (Service Company) and, Coral Hammock LLC, a Florida Corporation (Coral Hammock), having its office(s) at 210 S. Parsons Ave Suite 12, Brandon, Florida 33511. (“Developer”).

R E C I T A L S

- A. Developer is the owner of certain real property more particularly described on Exhibit A, attached hereto and made a part hereof (the Property).
- B. Developer proposes to construct, own, operate and maintain sewage collection system on the Property to service new construction located on the Property.
- C. Service Company owns, operates, manages and controls a Central Sewage System and is willing to provide sanitary sewer services pursuant to this Agreement.
- D. Developer requests that Service Company provide central wastewater service to the Property as indicated on the plans prepared by Weiler Engineering for The South Stock Island sewer expansion. (Copy of plan sheet included as an exhibit).

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00), and the mutual covenants and agreements hereinafter set forth, and intending to be legally bound thereby, it is agreed as follows:

1. Definitions

Business Day shall mean any day of the year in which commercial banks are not required or authorized to close in New York, New York.

Capacity Reservation Fee as such term is defined in Section 6 hereof.

Central Sewage System shall mean the central collection, transmission, treatment and disposal system and appurtenant facilities owned and operated by the Service Company.

Connection as such term is defined in Section 6 hereof.

Customer shall mean any residential or commercial customer of Service Company.

Equivalent Residential Connections (ERC), shall be defined as one individual residential connection or, for commercial and other uses, the estimated flow based on the use and Chapter 64E-6 F.A.C., divided by the most recently approved Capacity Analysis rate per residential connection (currently 250 gallons per day per residential connection).

Plans and Specifications as such term is defined in Section hereof.

Point of Delivery shall mean the point where the Central Sewage System connects to the pipes of the Customer, or as determined by Service Company when the on-site System is not conveyed to Service Company.

Property as such term is defined in the Recitals hereof.

Property Installations or System shall mean any service lines located on individual lots or parcels of the Property or to buildings located on the Property that connect to the Central Sewage System, and may include facilities located outside the Property, required to be installed by Developer, to connect facilities on the Property to the Central Sewage System.

Service Company's Affiliates shall mean any disclosed or undisclosed officer, director, employee, trustee shareholder, partner, principal, parent, subsidiary or other affiliate of Service Company.

Tariff shall mean Service Company's existing and future schedules of rates and charges for sewer service.

2. New System Construction

- (a) Prior to the construction and installation of the System, Developer shall, at its sole cost and expense, cause to be prepared and provide to Service Company plans and specifications of the system (Plans and specifications), which Plans and Specifications shall be prepared by engineers reasonably acceptable to Service company, and in accordance with all policies and practices of Service Company and all applicable laws and regulations and standards adopted by the Department of Environmental Protection and Monroe County.
- (b) Service Company shall approve or disapprove of the Plans and Specifications within

thirty days (30) of receipt thereof by written notice to Developer.

- (c) Upon Developer's receipt of Service Company's written notice of disapproval of the Plans and Specifications, Developer shall promptly revise the Plans and Specifications in accordance with any requirements set forth by Service Company in its written notice of disapproval, and re-submit such revised Plan and specifications to Service Company for approval or disapproval. Service Company shall approve or disapprove of any revised Plans and Specifications with five (5) business days of receipt thereof by written notice to Developer.
- (d) Upon Developer's receipt of Service Company's written notice of approval of the Plans and Specifications, Developer may proceed with the construction and installation of the System. Developer shall notify Service Company seventy-two (72) hours prior to beginning construction. All work shall be completed and inspected by licensed and insured contractors and engineers reasonably acceptable to Service Company. In accordance with Chapter 62-604 F.A.C., Developer shall provide, at its sole cost, a Professional Engineer Registered in Florida to provide on-site observation during construction and testing and to certify that the System is constructed in compliance with the approved Plans and Specifications. All materials employed by Developer for the System shall be reasonably acceptable to Service Company. No portion or element of the System shall be covered or concealed until inspected by Service Company. Developer shall notify Service Company of Developer's readiness for inspection of the System, and Service Company shall inspect the System within two (2) business days after each such notice. Any portion of the System not inspected by Service Company within said time period, shall be deemed to have been accepted by Service Company. In the event that Service Company determines through any such inspection that any portion of the System does not fully comply with the Plans and specific conditions or applicable laws and regulations, Service Company shall notify Developer in writing of such noncompliance not more than two (2) business days after any such inspection and Developer shall immediately modify the System to insure that the System fully complies with the Plans and Specifications and applicable laws and regulations.
- (e) In the event Service Company discovers that any portion or element of the System has been installed, covered or concealed without the prior approval of Service Company, Developer shall, upon written demand by Service Company, immediately dismantle or excavate such portion of the System at its sole cost and expense.

3. System Records

Prior to Service Company's acceptance of all or any portion of the System for service, operation and maintenance or for service only, Developer shall deliver the following records and documents to Service Company:

- (a) Copies of all invoices and/or contracts for the construction and installation.
- (b) An affidavit signed by the Developer stating that there are no parts or portions of the System which are not included in the invoices and contracts noted in subsection (a) above, that said invoices and contracts accurately and fully reflect the total cost of the System and that the System is free and clear of all liens and encumbrances.
- (c) Lien waivers from all contractors, subcontractors, material people, and any other parties that provided labor, services or materials in connection with the construction of the System.
- (d) A reproducible Mylar and two (2) sets of blue line copies, accurately depicting all of the System as constructed and installed, and signed and sealed by the engineer and surveyor of record for the System.
- (e) Copies of the results of all tests conducted on the System.
- (f) Any other records or documents required by applicable law or required under the Tariff.
- (g) A certificate of completion of the System signed and sealed by the engineer of record.
- (h) A copy of the Department of Environmental Protection permit to construct the System and all inspection reports and approvals issued by the Engineer and the Department of Environmental Protection and any other applicable governmental authority or agency.
- (i) Developer shall furnish a two (2) year written warranty and a two (2) year maintenance bond, guaranteeing Service Company against any defects in materials and workmanship of the System for the period of two (2) year after the date of acceptance of the System by the Service Company.
- (j) A bill of sale, in recording form, conveying all right, title and interest in and to the System, to Service Company free of any and all liens and encumbrances for that portion of the System located on the Service Company side of the Point of Delivery.

4. Property Rights

In those cases in which Service Company accepts all or any portion of the System for service, operation and maintenance, Developer shall convey the following property rights and interests for that portion of the System to Service Company:

- (a) A non-exclusive easement, in the form attached as Exhibit "B", for that portion of the Property of sufficient size to enable Service Company ingress and egress and to operate, maintain and replace such portions of the System not located within public rights-of-way. The foregoing easement shall be in effect for a period of time not less than the period during which the Service Company shall use the System to provide service to Customers.
- (b) A non-exclusive easement, in the form attached as Exhibit "B", of sufficient size to enable ingress, egress and access by Service company personnel or vehicles to any lift or pump station located on the Property. The foregoing easement shall be in effect for a period of time not less than the period during which the Service Company shall use the System to provide service to Customers.
- (c) Notwithstanding the foregoing easements, Developer retains all rights and privileges to utilize the Property in any manner it deems appropriate provided such use is not inconsistent with the purposes intended for such easements.

5. Existing Systems

Developer may connect an existing gravity or low pressure system (Existing System) to Service Company's vacuum system provided the Existing System meets the following criteria:

- (a) The Existing System must meet all county plumbing codes and have in full force and effect a Department of Environmental Protection permit to operate said system, if required by Department of Environmental Protection. Developer agrees to maintain said permit if any, at it's cost and expense.
- (b) The Existing System must be free from any intrusion of water from ground or surface resources.
- (c) Developer must make a non-refundable deposit with Service Company of \$ _____ to

pay for the inspection and testing of the Existing System by Service Company's agents and engineers.

- (d) Provision for Existing Systems requiring hydraulic lift to Right-of-Way – The Developer, at its discretion, may propose to utilize an existing gravity system that delivers sewage flows to the County Right-of-Way via a hydraulic system with the following conditions: Total flow from any one source that is delivered via hydraulic assistance shall not exceed 3 GPM. Where an Existing System proposes to transmit flows in excess of 3 GPM, the Existing System must be designed with multiple output points not to exceed 3 GPM each to be separated by a horizontal distance of 100 feet or greater as measured along the Service Company's vacuum main. The Developer's hydraulic system must be configured with an electronic shut-off to ensure that flows do not continue during an emergency failure of the Service Company's vacuum system. The Developer agrees to maintain a gravity system that does not incur excessive amounts of infiltration and inflow (I/I). An excessive amount of I/I is defined as flows exceeding 150% of the average daily flows for a 12-hour period. The utility reserves the right to discontinue service to the Developer in the event that the utility determines that excessive amounts of I/I are being received from the Developer.
- (e) In the event that an Existing System, after connection to the Central Sewage System, needs repair (other than non-emergency repairs) then Developer agrees to make said repairs within 30 days of notice by Service Company. In the event of failure by Developer to make repairs to its system within said time period the Service Company shall be permitted to discontinue service to the Existing System.

In the event of the need for emergency repairs to an Existing System, Service Company shall be authorized to make said repairs (but shall not be obligated) and upon presentation of a bill to Developer for said repairs said bill shall be immediately due and payable.

- (f) Developer agrees to provide Service Company with:
 - (1) a copy of its Department of Environmental Protection Permit, if required;
 - (2) a survey accurately depicting the location of the Existing System as constructed and installed and signed and sealed by a surveyor; and,

Service Company shall have the right, but not the obligation, to accept ownership of the Existing System. Should Service Company accept ownership, Developer shall comply with

the Property Rights requirements set forth in § 4 herein.

Upon acceptance by Service Company, Developer agrees that Service Company, or its agents, shall have access at all reasonable hours to the Existing System on the Property for the purpose of inspection, repair, meter reading, disconnecting service, reconnecting service, and in doing so will not be liable for trespass. This shall include the right of access to areas outside individual units on the Property.

6. Rates, Fees, Charges

(a) All Customers will pay the applicable fees, rates and charges as set forth in the Tariff. Nothing contained in this Agreement shall serve to prohibit Service Company's right to bill or collect its rates and charges from Customers, nor to require compliance with any provision of its Tariff.

(b) Developer shall pay to Service Company a reservation fee (Capacity Reservation Fee), in the amount of Two Thousand Seven Hundred (\$2,700.00) dollars per E.R.C. connection to be reserved by Developer to serve the residential or commercial structures to be constructed in or upon the Property (individually, a Connection, collectively, the Connections). Prior to execution of this agreement, Developer shall supply Service Company access and information necessary to determine number of ERC's proposed. Information may include plans, occupational licenses, etc. for:

* 55 Single Family Homes	55	ERC's
* Swimming pool / Clubhouse	5.9	ERC's
6 Fixtures, 200 gpd each		
*Total	60.9	ERC's

(c) The Capacity Reservation Fee for each connection shall be payable by Developer to Service Company as follows:

(i) 1/3 (\$54,810) upon execution of this agreement

(ii) 2/3 (\$109,620) upon connection of the first house or office building to the system

(d) In the event of additional development on the property or a change in use Developer shall provide Service Company with a site plan and schedule of proposed

development of the Property setting forth the amount of Connections for which capacity shall be additionally reserved under this Agreement. Service Company hereby agrees to reserve such capacity for the benefit for Developer subject to the provisions of this Section 6, provided, however, that such reservations shall not be effective until Service Company has received the initial installment of the Capacity Reservation Fee in accordance with Section 6(c)(i) hereof, and provided, further, that Service Company shall have the right to cancel such reservations in the event of Developer' s failure to comply with the terms of this Agreement. In the event there is additional water usage over and above the amount reserved in paragraph 6b above, (based on an annual review) the developer shall remit additional capacity reservation fees to Service Company 30 days after notice by Service Company of additional fees due.

- (e) Developer shall pay to Service Company, for engineering services and applicable administrative fees necessary to review and approve construction plans and documents and for periodic inspection during construction and testing in the amount of \$____. Said payment is to be made 15 days after submission of plans and documents.
- (f) In the event of default by Developer and the payment of fees hereunder, Service Company may cancel this agreement by giving 30 (thirty) days written notice of default and retain all payments hereunder as liquidated damages.
- (g) Developer agrees that in the event of a change of use or any change that might affect the flows (i.e. Addition of a restaurant) Service Company will be notified and the applicable Capacity Reservation fees will be paid prior to discharge to the Central Sewage System.

7. **Absolute Conveyance**

Developer understands, agrees and acknowledges that Developer' s conveyance of any and all easements, real property or personal property (including, without limitation, the System), or payment of any funds hereunder (including, without limitation, the Capacity Reservation Fee and Connection Charges), shall, upon acceptance by Service Company, be absolute, complete and unqualified, and that neither Developer nor any party claiming by or through Developer shall have any right to such easements, real or personal property, or funds, or any benefit which Service Company may derive from such conveyance or payments in any form or manner.

8. **Delivery of Service; Operation and Maintenance**

- (a) Upon Developer' s full performance of its obligations under this Agreement, Service Company shall provide service to the Point of Delivery in accordance with the terms of this Agreement, all applicable laws and regulations and shall operate and maintain the Central Sewage System to the Point of Delivery in accordance with the terms and provisions of this Agreement. Said service shall be provided on or about September 1st, 2003.
- (b) Developer shall, at its sole cost and expense, own, operate and maintain any part of the System that has not been conveyed to Service Company pursuant to the terms and conditions of this Agreement.
- (c) Developer acknowledges that certain water quality standards must be met prior to influent entering the wastewater treatment plant (primarily chloride levels and excessive flows) and agrees to allow Service Company to monitor flows and water quality at Service Company' s discretion at a point on the Developer' s side of the Point of Delivery. If it is determined that substandard influent or excessive flows are entering the Central Sewage System via Developer' s System, Developer agrees to isolate the source and to repair or replace the portion or portions of the faulty System in a manner acceptable to Service Company in accordance with this agreement.
- (d) In the event any portion of the Property is developed as a condominium, the condominium association shall be required to execute a maintenance agreement with respect to any portion of the System not conveyed to Service Company. Such maintenance agreement shall provide that if the condominium association fails to adequately maintain and repair the System, Service Company shall have the right to maintain and repair such System at the sole cost and expense of the condominium association.

9. **Repair of System**

In the event of any damage to or destruction of any portion of the Central Sewage System due to any acts or omissions by Developer, any Customer or their respective agents, representatives, employees, invitees or licensees, Service Company shall repair or replace such damaged or destroyed facilities at the sole cost and expense of responsible party. Developer shall operate, maintain and repair all other portions of the System not conveyed to Service Company at its sole cost and expense.

10. **Term**

This Agreement shall become effective as of the date first written above, and shall continue for so long as Service Company provides sewer service to the public.

11. **Default**

In the event of a default by either party of its duties and obligations hereunder, the non-defaulting party shall provide written notice to the defaulting party specifying the nature of the default and the defaulting party shall have five (5) days to cure any default of a monetary nature and thirty (30) days for any other default. If the default has not been cured within the applicable period (time being of the essence), the non-defaulting party shall be entitled to exercise all remedies available at law or in equity, including but not limited to, the right to damages, injunctive relief and specific performance. Service Company may, at its sole option, discontinue and suspend the delivery of service to the System in accordance with all requirements of applicable law and the Tariff if Developer fails to timely pay all fees, rates and charges pursuant to the terms of this Agreement.

12. **Excuse from Performance**

- (a) **Force Majeure.** If Service Company is prevented from or delayed in performing any act required to be performed by Service Company hereunder, and such prevention or delay is caused by strikes, labor disputes, inability to obtain labor, materials or equipment, storms, earthquakes, electric power failures, land subsidence, acts of God, acts of public enemy, wars, blockades, riots, acts of armed forces, delays by carriers, inability to obtain rights-of-way, acts of public authority, regulatory agencies, or courts, or any other cause, whether the same kind is enumerated herein, not within the control of Service Company (Force Majeure), the performance of such act shall be excused for a period equal to the period of prevention or delay.
- (b) **Governmental Acts** If for any reason during the term of this Agreement, other than the fault of Developer, any federal, state or local authorities or agencies fail to issue necessary permits, grant necessary approvals or require any change in the operation of the Central Sewage System or the System (Governmental Acts), then, to the extent that such Governmental Acts shall affect the ability of any party to perform any of the terms of this Agreement in whole or in part, the affected party shall be excused from the performance thereof and a new agreement shall be negotiated, if possible, by the parties hereto in conformity with such permits, approvals or requirements. Notwithstanding the foregoing, neither Developer nor Service Company shall be obligated to accept any new agreement if it substantially adds to its burdens and obligations hereunder.

- (c) Emergency Situations Service Company shall not be held liable for damages to Developer and Developer hereby agrees not to hold Service Company liable for damages for failure to deliver service to the Property upon the occurrence of any of the following events:
1. A lack of service due to loss of flow or process or distribution failure;
 2. Equipment or material failure in the Central Sewage System or the System, including storage, pumping and piping provided the Service Company has utilized its best efforts to maintain the Central Sewage System in good operating condition; and
 3. Force Majeure, unforeseeable failure or breakdown of pumping, transmission or other facilities, any and all governmental requirements, acts or action of any government, public or governmental authority, commission or board, agency, agent, official or officer, the enactment of any statute, ordinance, resolution, regulation, rule or ruling, order, decree or judgment, restraining order or injunction of any court, including, without limitation, Governmental Acts.
- (d) Notwithstanding any excuse of performance due to the occurrence of any of the foregoing events, Developer shall not be excused from payment of any fees, charges and rates due to Service Company under the terms of this Agreement (including without limitation, the Capacity Reservation Fee and Connection Charges).

13. Successors and Assigns

This Agreement and the easements granted hereby, shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

14. Indemnification

Developer shall indemnify, defend and hold Service Company and Service Company's Affiliates harmless from and against any and all claims, demands, causes of action, losses, damages, liabilities, costs and reasonable expenses, including, without limitation, attorneys fees and disbursements, suffered or incurred by Service Company or any of Service Company's Affiliates and arising out of or in connection with use, occupancy, or operation of the System, the Property, or the activities, errors, or omissions of Developer, its agents, employees, servants, licensees, invitees, or contractors on or about the Property, pursuant to

terms and conditions of this Agreement. Developer's duty to indemnify shall also include, but not be limited to, indemnification from and against any fine, penalty, liability, or cost to Service Company arising out of Developer's violation or breach of any law, ordinance, governmental regulation, this Agreement requirement or permit applicable to the System or Developer's activities on or about the Property. The provisions of this Section 13 shall survive the termination of this Agreement. Developers civil engineering firm shall maintain errors and omission@ insurance in an amount of \$1,000,000.

15. Insurance

For up to one year following conveyance of the System to Service Company Developer shall maintain or cause to be maintained a policy of commercial general liability insurance with a broad form contractual liability endorsement covering Developer's indemnification obligations contained in this Agreement, and with a combined single limit of not less than \$1,000,000 general liability, insuring Service Company and Service Company's Affiliates, as additional insured in such forms and with an insurance company reasonably acceptable to Service Company, and shall deliver a copy of such insurance policy together with a certificate of insurance to Service Company prior to or upon execution of this Agreement. All such insurance shall be written on an occurrence form.

Developer agrees to assign any and all warranties, and maintenance, completion and performance bonds and the right to enforce same to the Service Company which Developer obtains from any contractor constructing the System. Developer shall obtain a written warranty, completion, and performance and maintenance bonds from its contractor for a minimum period of twenty four (24) months.If Developer does not obtain such written warranty and performance and maintenance bonds from its contractor and deliver same to Service Company, then in such event, Developer agrees to warrant the construction of the System for a period of twenty four (24) months from the date_of acceptance by the Service Company.

16. Notices

All notices, demands, requests or other communications by either party under this Agreement shall be in writing and sent by (a) first class U.S. certified or registered mail, return receipt requested, with postage prepaid, or (b) overnight delivery service or courier, or (c) telefacsimile or similar facsimile transmission with receipt confirmed as follows:

If to Service Company:

Mr. Doug Carter, General Manager
6450 Junior College Road
Key West, Florida 33040
Fax (305) 294-1212

With a copy to:

Mr. Jeff Weiler, P.E.
Weiler Engineering
20020 Veterans Blvd.
Port Charlotte, Florida 33954
Fax (941) 764-8915

If to Developer:

Everett Atwell
Coral Hammock LLC
210 Parsons Ave
Suite 12
Brandon, FL 33511

17. Tariff

This Agreement is subject to all of the terms and provision of the Tariff. In the event of any conflict between the Tariff and the terms of this Agreement, the Tariff shall govern and control.

18. Miscellaneous Provisions

- (a) This Agreement shall not be altered, amended, changed, waived, terminated or otherwise modified in any respect or particular, and no consent or approval required pursuant to this Agreement shall be effective, unless the same shall be in writing and signed by or on behalf of the party to be charged.
- (b) All prior statements, understandings, representations and agreements between the parties, oral or written, are superseded by and merged in this Agreement, which alone fully and completely expresses the agreement between them in connection with this transaction and which is entered into after full investigation, neither party relying upon any statement, understanding, representation or agreement made by the other not embodied in this Agreement. This Agreement shall be given a fair and

reasonable construction in accordance with the intentions of the parties hereto, and without regard to or aid of canons requiring construction against Service Company or the party drafting this Agreement.

- (c) No failure or delay of either party in the exercise of any right or remedy given to such party hereunder or the waiver by any party of any condition hereunder for its benefit (unless the time specified herein for exercise of such right or remedy has expired) shall constitute a waiver of any other or further right or remedy nor shall any single or partial exercise of any right or remedy preclude other or further exercise thereof or any other right or remedy. No waiver by either party of any breach hereunder or failure or refusal by the other party to comply with its obligations shall be deemed a waiver of any other or subsequent breach, failure or refusal to so comply.
- (d) This Agreement may be executed in one or more counterparts, each of which so executed and delivered shall be deemed an original, but all of which taken together shall constitute but one and the same instrument. It shall not be necessary for the same counterpart of this Agreement to be executed by all of the parties hereto.
- (e) Each of the exhibits and schedules referred to herein and attached hereto is incorporated herein by this reference.
- (f) The caption headings in this Agreement are for convenience only and are not intended to be a part of this Agreement and shall not be construed to modify, explain or alter any of the terms, covenants or conditions herein contained.
- (g) This Agreement shall be interpreted and enforced in accordance with the laws of the state in which the Property is located without reference to principles of conflicts of laws. In the event that the Florida Public Service commission loses or relinquishes its authority to regulate Service Company, then all references to such regulatory authority will relate to the agency of government or political subdivision imposing said regulations. If no such regulation exists, then this Agreement shall be governed by applicable principles of law.
- (h) Each of the parties to this Agreement agrees that at any time after the execution hereof, it will, on request of the other party, execute and deliver such other documents and further assurances as may reasonably be required by such other party in order to carry out the intent of this Agreement.
- (i) If any provision of this Agreement shall be unenforceable or invalid, the same shall not affect the remaining provisions of this Agreement and to this end the provisions

of this Agreement are intended to be and shall be severed. Notwithstanding the foregoing sentence, if (I) any provision of this Agreement is finally determined by a court of competent jurisdiction to be unenforceable or invalid in whole or in part, (ii) the opportunity for all appeals of such determination have expired, and (iii) such unenforceability or invalidity alters the substance of this Agreement (taken as a whole) so as to deny either party, in a material way, the realization of the intended benefit of its bargain, such party may terminate this Agreement within thirty (30) days after the final determination by notice to the other. If such party so elects to terminate this Agreement, then this Agreement shall be terminated and neither party shall have any further rights, obligations or liabilities hereunder, except for any rights, obligations or liabilities which by this specific terms of this Agreement survive the termination of this Agreement.

- (j) In the event of any litigation arising out of or connected in any manner with this Agreement, the non-prevailing party shall pay the costs of the prevailing party, including its reasonable counsel and paralegal fees incurred in connection therewith through and including all other legal expenses and the costs of any appeals and appellate costs relating thereto. Wherever in this Agreement it is stated that one party shall be responsible for the attorneys fees and expenses of another party, the same shall automatically be deemed to include the fees and expenses in connection with all appeals and appellate proceedings relating or incidental thereto. This subsection (j) shall survive the termination of this Agreement.
- (k) This Agreement shall not be deemed to confer in favor of any third parties any rights whatsoever as third-party beneficiaries, the parties hereto intending by the provisions hereof to confer no such benefits or status.
- (l) Developer agrees that Service Company may, at its sole discretion, require certain allocations to the proposed collection and transmission systems for future connections. Developer further agrees that Service Company may, at its sole discretion, extend the sewer line for any reason. It is understood that there will be no reimbursement or additional credit.

IN WITNESS WHEREOF, Service Company and Developer have executed this Agreement as of the day and year first above written.

SERVICE COMPANY:

Key West Resort Utilities Corporation
By: _____

DEVELOPER:

Everett Atwell
Coral Hammock.

Print Name: _____

By: _____

Title: _____

Print Name: _____

Address: Key West Resort Utilities
Corporation
6450 Junior College Road
Key West, Florida 33040

Title: _____

Address: Everett Atwell
Coral Hammock
210 Parsons Ave.
Brandon, FL 33511

STATE OF FLORIDA)
) ss:
COUNTY OF MONROE)

The foregoing instrument was acknowledged before me this _____ day of _____, 200__, by _____, as _____, a Florida corporation, on behalf of said corporation. He/she is personally known to me or who has produced _____ as identification.

My Commission Expires:

STATE OF FLORIDA)
) ss:
COUNTY OF MONROE)

The foregoing instrument was acknowledged before me this _____ day of _____, 200__, by _____, as _____, a Florida corporation, on behalf of said corporation. He/she is personally known to me or who has produced _____ as identification.

My Commission Expires: