

LAW OFFICES  
**ROSE, SUNDBSTROM & BENTLEY, LLP**  
2548 BLAIRSTONE PINES DRIVE  
TALLAHASSEE, FLORIDA 32301  

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**(850) 877-6555**

**ORIGINAL**

CHRIS H. BENTLEY, P.A.  
F MARSHALL DETERDING  
MARTIN S. FRIEDMAN, P.A.  
JOHN R. JENKINS, P.A.  
STEVEN T. MINDLIN, P.A.  
JOSEPH P. PATTON  
DAREN L. SHIPPY, LL.M. TAX  
WILLIAM E. SUNDBSTROM, P.A.  
DIANE D. TREMOR, P.A.  
JOHN L. WHARTON

MAILING ADDRESS  
POST OFFICE BOX 1567  
TALLAHASSEE, FLORIDA 32302-1567

TELECOPIER (850) 656-4029

November 26, 2001

VIA HAND DELIVERY

ROBERT M. C. ROSE  
OF COUNSEL

Ms. Blanca S. Bayo, Director  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

010000-PU

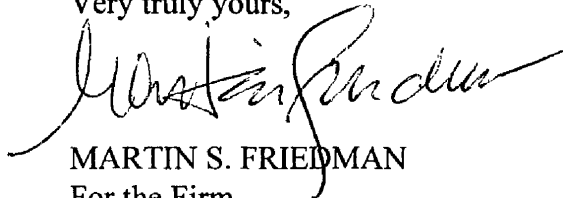
Re: North Fort Myers Utilities, Inc.; Wastewater Service Agreement with Ziegler  
Our File No. 16319.29

Dear Ms. Bayo:

Pursuant to Commission Rule 25-30.550, Florida Administrative Code, enclosed is a copy of a Wastewater Service Agreement entered into between North Fort Myers Utilities, Inc. and James L. Ziegler for wastewater service to the Ziegler commercial site. North Fort Myers Utility Inc.'s wastewater treatment plant has a permitted capacity of 3.5 mgd. The current treatment plant connected load is approximately 1.2 million gallons a day and this Wastewater Agreement is for 924 gallons a day. There is sufficient capacity in NFMU's existing plant to provide wastewater service pursuant to this Wastewater Agreement. This Wastewater Agreement will have no noticeable impact on the Utility's rates due to the amount of demand being placed on the NFMU wastewater system, and resultant revenues.

In accordance with the aforementioned Rule, we will deem this Agreement approved if we do not receive notice from the Commission of its intent to disapprove within thirty days. Should you have any questions regarding this Agreement, please do not hesitate to contact me.

Very truly yours,



MARTIN S. FRIEDMAN  
For the Firm

APP  
CAF  
CMP  
COM  
CTR  
EGR  
LEG  
OPC  
PAI  
RGO  
SEC  
SER  
OTH

MSF/brm

Enclosure

cc: Mr. Tony Reeves

DOCUMENT NUMBER-DATE  
14894 NOV 26 2001  
COMMISSION CLERK

ZIEGLER Comm. Site

NAME OF PROJECT

DEVELOPER AGREEMENT

THIS AGREEMENT made and entered into this 19<sup>th</sup> day of November, 2001, by and between JAMES L. ZIEGLER, 4347 SW 26<sup>th</sup> Place, Cape Coral, Florida 33914, hereinafter referred to as "Developer," and NORTH FORT MYERS UTILITY, INC., a Florida corporation, 5660 Bayshore Road, Suite 51, North Fort Myers, Florida 33917, hereinafter referred to as "Service Company,"

WHEREAS, Developer owns or controls lands located in Lee County, Florida, and described in Exhibit "A," attached hereto and made a part hereof as if fully set out in this paragraph and hereinafter referred to as the "Property," and Developer has plans to develop the Property by constructing thereon commercial structures requiring approximately 924 gallons per day of Wastewater Service; and

WHEREAS, Developer desires that the Service Company provide central wastewater collection, treatment and disposal service ("Wastewater Services") for Developer's Property herein described; and

WHEREAS, the Service Company is willing to provide, in accordance with the provisions of this Agreement and Service Company's Service Availability Policy, central Wastewater Services to the Property and thereafter operate applicable facilities so that the occupants of the improvements on the Property will receive adequate wastewater collection, treatment and disposal service from Service Company;

NOW, THEREFORE, for and in consideration of the premises, the mutual undertakings and agreements herein contained and assumed, Developer and Service Company hereby covenant and agree as follows:

1.0 The foregoing statements are true and correct and incorporated herein by reference.

2.0 The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning:

- (a) "Consumer Installation" - All facilities ordinarily on the Developer's side of the Point of Delivery.
- (b) "Contribution-in-aid-of-Construction (CIAC)" - The sum of money and/or the

value of Property represented by the cost of the wastewater collection systems including lift stations and treatment plants constructed or to be constructed by a Developer or owner, which Developer or owner transfers, or agrees to transfer, to Service Company at no cost to Service Company to provide Wastewater Service to the Property.

- (c) "Equivalent Residential Connection (ERC)" - A factor used to convert a given average daily flow (ADF) to the equivalent number of residential connections. For this purpose the average daily flow of one equivalent residential connection (ERC) is 275 gallons per day (gpd). The number of ERC's contained in a given ADF is determined by dividing that ADF by 275 gpd. The determination of the number of ERC's for the Property shall be subject to factoring as outlined in Service Company's Service Availability Policy.
- (d) "Point of Delivery" - The point where the pipes of Service Company are connected with the facilities of the Developer, which shall be at the inflow point of the on-site wastewater pump station.
- (e) "Property" - The area or parcel of land described in Exhibit "A."
- (f) "Service" - The readiness and ability on the part of Service Company to furnish and maintain Wastewater Service to the Point of Delivery (pursuant to applicable rules and regulations of applicable regulatory agencies).

3.0 Assurance of Title. Within a period of forty-five (45) days after the execution of this Agreement, at the expense of Developer, Developer agrees to deliver to Service Company a copy of Title Insurance Policy or an opinion of title from a qualified attorney-at-law, with respect to the Property, which opinion shall include a current report on the status of the title, setting out

the name of the legal title holders, the outstanding mortgages, taxes, liens and covenants. The provisions of this paragraph are for the purpose of evidencing Developer's legal right to grant the exclusive rights of service contained in this Agreement.

4.0 Connection Charges. Payment of the connection charges does not and will not result in Service Company waiving any of its rates or rules or regulations, and their enforcement shall not be affected in any manner whatsoever by Developer making payment of same. Service Company shall not be obligated to refund to Developer any portion of the value of the connection charges for any reason whatsoever, nor shall Service Company pay any interest or rate of interest upon the connection charges paid.

4.1 Neither Developer nor any person or other entity holding any of the Property by, through or under Developer, or otherwise, shall have any present or future right, title, claim or interest in and to the connection charges paid or to any of the wastewater facilities and properties of Service Company, and all prohibitions applicable to Developer with respect to no refund of connection charges, no interest payment on said connection charges and otherwise, are applicable to all persons or entities.

4.2 Any user or consumer of Wastewater Service shall not be entitled to offset any bill or bills rendered by Service Company for such service or services against the connection charges paid. Developer shall not be entitled to offset the connection charges against any claim or claims of Service Company.

5.0 On-Site Systems. Developer hereby covenants and agrees to construct the on-site wastewater collection systems. The term "on-site wastewater collection systems" means and includes all wastewater collection lines, facilities and equipment, including pumping stations, constructed within the boundaries of Developer's property adequate in size to serve each lot or unit within the property or as otherwise required by Service Company, and to connect such system to Service Company's existing force main located along U.S. 41.

5.1 Developer shall provide Service Company with one (1) copy of the application for permits and one (1) set of finalized engineering plans prepared and sealed by a professional engineer registered in the State of Florida. Plans shall show the on-site wastewater collection systems proposed to be installed to provide service to the Property. Developer shall cause his engineer to submit specifications governing the material to be used and the method and manner of installation. All such plans and specifications submitted to Service Company's engineer shall meet the

minimum specifications of Service Company and shall be subject to the approval of Service Company, which approval shall not be unreasonably withheld. No construction shall commence until Service Company and appropriate regulatory agencies have approved such plans and specifications in writing. When permits and approved plans are returned by appropriate regulatory agencies to Developer, Developer shall submit to Service Company one copy of the wastewater permit and approved plans.

5.2 After the approval of plans and specifications by Service Company and appropriate regulatory agencies, Developer, or the engineer of record, shall set up a preconstruction conference with engineer of record, utility contractor, appropriate building official(s), all other utility companies involved in the development of the Property, and Service Company.

5.3 Developer shall provide to Service Company's inspector, forty-eight (48) hours notice prior to commencement of construction. Developer shall cause to be constructed, at Developer's own cost and expense, the on-site wastewater collection systems as shown on the approved plans and specifications.

5.4 During the construction of the on-site wastewater collection systems by Developer, Service Company shall have the right to inspect such installations to determine compliance with the approved plans and specifications. The engineer of record shall also inspect construction to assure compliance with the approved plans and specifications. Service Company, engineer of record and utility contractor shall be present for all standard tests for pressure, exfiltration, line and grade, and all other normal engineering tests to determine that the systems have been installed in accordance with the approved plans and specifications, and good engineering practices. Developer agrees to pay to Service Company, or Service Company's authorized agent, a reasonable sum to cover the cost of inspection of installations made by Developer or Developer's contractor, which fee shall not exceed \$100.

5.5 Upon completion of construction, Developer's engineer of record shall submit to Service Company a copy of the signed certification of completion submitted to the appropriate regulatory agencies. The engineer of record shall also submit to Service Company ammonia mylars of the as-built plans prepared and certified by the engineer of record. Developer shall maintain the on-site wastewater collection system so that infiltration is within the range of tolerance acceptable within the wastewater industry.

6.0 Agreement to Serve. Upon the completion of construction of the on-site wastewater collection system, its inspection, and

the other terms of this Agreement and Service Company's Service Availability Policy, Service Company covenants and agrees that it will connect or oversee the connection of the wastewater collection system installed by Developer to the central facilities of Service Company in accordance with the terms and intent of this Agreement. Such connection shall at all times be in accordance with rules, regulations and orders of the applicable governmental authorities. Service Company agrees that once it provides Wastewater Service to the Property and Developer or others have connected Consumer Installations to its system, that thereafter Service Company will continuously provide, at its cost and expense, but in accordance with the other provisions of this Agreement, including rules and regulations and rate schedules, Wastewater Service to the Property in a manner to conform with all requirements of the applicable governmental authority having jurisdiction over the operations of Service Company.

7.0 Application for Service: Consumer Installations. Developer, or any owner of any parcel of the Property, or any occupant of any residence, building or unit located thereon shall not have the right to and shall not connect any Consumer Installation until formal written application has been made to Service Company by the prospective user of service, or either of them, in accordance with the then effective rules and regulations of Service Company and approval for such connection has been granted.

7.1 Although the responsibility for connecting the Consumer Installation to the lines of Service Company at the Point of Delivery is that of the Developer or entity other than Service Company, with reference to such connections, the parties agree as follows:

- (a) All Consumer Installation connections must be inspected by Service Company before backfilling and covering of any pipes.
- (b) Notice to Service Company requesting an inspection of a Consumer Installation connection may be given by the plumber or Developer, and the inspection will be made within twenty-four (24) hours, not including Saturdays, Sundays, and holidays.
- (c) If Service Company fails to inspect the Consumer Installation connection within forty-eight (48) hours after

such inspection is requested by Developer or the owner of any parcel, Developer or owner may backfill or cover the pipes without Service Company's approval and Service Company must accept the connection as to any matter which could have been discovered by such inspection.

- (d) If the Developer does not comply with the foregoing inspection provisions, Service Company may refuse service to a connection that has not been inspected until Developer complies with these provisions.
- (e) The cost of constructing, operating, repairing or maintaining Consumer Installations shall be that of Developer or a party other than Service Company.
- (f) If a commercial kitchen, cafeteria, restaurant or other food preparation or dining facility is constructed within the Property, the Service Company requires that a grease trap be constructed, installed and connected so that all wastewaters from any grease producing equipment within such facility, including floor drains in food preparation areas, shall first enter the grease trap for pretreatment before the wastewater is delivered to the lines of the Service Company. Size, materials and construction of such grease trap shall be approved by Service Company.

No substance other than domestic wastewater will be placed into the wastewater system and delivered to the lines of the Service Company. Should any non-domestic wastes, grease or oils, including, but not limited to, floor wax or paint, be delivered to the lines, the customer will be responsible for payment of the cost

and expense required in correcting or repairing any resulting damage.

8.0 Exclusive Right to Provide Service. Developer, as a further and essential consideration of this Agreement, agrees that Developer, or the successors and assigns of Developer, shall not (the words "shall not" being used in a mandatory definition) engage in the business or businesses of providing Wastewater Services to the Property during the period of time Service Company, its successors and assigns, provide Wastewater Services to the Property, it being the intention of the parties hereto that under the foregoing provision and also other provisions of this Agreement, Service Company shall have the sole and exclusive right and privilege to provide Wastewater Services to the Property and to the occupants of such buildings or units constructed thereon.

9.0 Rates. Service Company agrees that the rates to be charged to Developer and individual consumers of Wastewater Services shall be those set forth in the tariff of Service Company approved by the applicable governmental agency. However, notwithstanding any provision in this Agreement, Service Company, its successors and assigns, may establish, amend or revise, from time to time in the future, and enforce rates or rate schedules so established and enforced and shall at all times be reasonable and subject to regulations by the applicable governmental agency, or as may be provided by law. Rates charged to Developer or consumers located upon the Property shall at all times be identical to rates charged for the same classification of service, as are or may be in effect throughout the service area of Service Company.

9.1 Notwithstanding any provision in this Agreement to the contrary, Service Company may establish, amend or revise, from time to time, in the future, and enforce rules and regulations covering Wastewater Services to the Property. However, all such rules and regulations so established by Service Company shall at all times be reasonable and subject to such regulations as may be provided by law.

9.2 Any such initial or future decreased or increased rates, rate schedules, and rules and regulations established, amended or revised and enforced by Service Company from time to time in the future, as provided by law, shall be binding upon Developer; upon any person or other entity holding by, through or under Developer; and upon any user or consumer of the Wastewater Service provided to the Property by Service Company.

10.0 Binding Effect of Agreement. This Agreement shall be binding upon and shall inure to the benefit of Developer, Service



Company and their respective assigns and successors by merger, consolidation, conveyance or otherwise, subject to the provisions of Paragraph 22 hereof.

11.0 Notice. Until further written notice by either party to the other, all notices provided for herein shall be in writing and transmitted by messenger, by mail or by telegram, and if to Developer, shall be mailed or delivered to Developer at:

James L. Ziegler  
4347 SW 25<sup>th</sup> Place  
Cape Coral, Florida 33914

and if to the Service Company, at:

North Fort Myers Utility, Inc.  
Post Office Box 2547  
Ft. Myers, Florida 33902  
Attention: A. A. Reeves, III

with a copy to :

Rose, Sundstrom & Bentley, LLP  
2548 Blainstone Pines Drive  
Tallahassee, Florida 32301  
Attention: Martin S. Friedman, Esquire

12.0 Laws of Florida. This Agreement shall be governed by the laws of the State of Florida and it shall be and become effective immediately upon execution by both parties hereto, subject to any approvals which must be obtained from governmental authority, if applicable.

13.0 Costs and Attorney's Fees. In the event the Service Company or Developer is required to enforce this Agreement by Court proceedings or otherwise, by instituting suit or otherwise, then the prevailing party shall be entitled to recover from the other party all costs incurred, including reasonable attorney's fees, including such fees and costs of any appeal.

14.0 Force Majeure. In the event that the performance of this Agreement by either party to this Agreement is prevented or interrupted in consequence of any cause beyond the control of either party, including but not limited to Act of God or of the public enemy, war, national emergency, allocation or of other governmental restrictions upon the use or availability of labor or materials, rationing, civil insurrection, riot, racial or civil rights disorder or demonstration, strike, embargo, flood, tidal

wave, fire, explosion, bomb detonation, nuclear fallout, windstorm, hurricane, earthquake, sinkhole or other casualty or disaster or catastrophe, unforeseeable failure or breakdown of pumping transmission or other facilities, governmental rules or acts or orders or restrictions or regulations or requirements, acts or action of any government or public or governmental authority or commission or board or agency or agent or official or officer, the enactment of any statute or ordinance or resolution or regulation or rule or ruling or order, order or decree or judgment or restraining order or injunction of any court, said party shall not be liable for such non-performance.

15.0 Indemnification. Developer agrees to indemnify and hold Service Company harmless from and against any and all liabilities, claims, damages, costs and expenses (including reasonable trial and appellate attorney's fees) to which Service Company may become subject by reason of or arising out of Developer's performance of this Agreement. This indemnification provision shall survive the actual connection to Service Company's wastewater system.

#### MISCELLANEOUS PROVISIONS

16.0 The rights, privileges, obligations and covenants of Developer and Service Company shall survive the completion of the work of Developer with respect to completing the facilities and services to any development phase and to the Property as a whole.

17.0 This Agreement supersedes all previous agreements or representations, either verbal or written, heretofore in effect between Developer and Service Company, made with respect to the matters herein contained, and when duly executed, constitutes the agreement between Developer and Service Company. No additions, alterations or variations of the terms of this Agreement shall be valid, nor can provisions of this Agreement be waived by either party, unless such additions, alterations, variations or waivers are expressed in writing and duly signed.

18.0 Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural, and the masculine, feminine and neuter genders shall each include the others.

19.0 Whenever approvals of any nature are required by either party to this Agreement, it is agreed that same shall not be unreasonably withheld or delayed.

20.0 The submission of this Developer Agreement for examination by Developer does not constitute an offer but becomes effective only upon execution thereof by Service Company.

21.0 Failure to insist upon strict compliance of any of the terms, covenants, or conditions herein shall not be deemed a waiver of such terms, covenants, or conditions, nor shall any waiver or relinquishment of any right or power hereunder at any one time or times be deemed a waiver or relinquishment of such right or power at any other time or times.

22.0 Because of inducements offered by Developer to Service Company, Service Company has agreed to provide Wastewater Services to Developer's project. Developer understands and agrees that capacity reserved hereunder cannot and shall not be assigned by Developer to third parties without the written consent of Service Company, except in the case of a bona-fide sale of Developer's Property. Such approval shall not be unreasonably withheld. Moreover, Developer agrees that this Agreement is a superior instrument to any other documents, representations, and promises made by and between Developer and third parties, both public and private, as regards the provisions of Wastewater Service to Developer's property.

23.0 It is agreed by and between the parties hereto that all words, terms and conditions contained herein are to be read in concert, each with the other, and that a provision contained under one heading may be considered to be equally applicable under another in the interpretation of this Agreement.

24.0 Service Company shall at all reasonable times and hours, have the right of inspection of Developer's internal lines and facilities. This provision shall be binding on the successors and assigns of the Developer.

25.0 The parties hereto recognize that prior to the time Service Company may actually commence upon a program to carry out the terms and conditions of this Agreement, Service Company may be required to obtain approval from various state and local governmental authorities having jurisdiction and regulatory power over the construction, maintenance and operation of Service Company. The Service Company agrees that it will diligently and earnestly, at its sole cost and expense, make the necessary proper applications to all governmental authorities and others and will pursue the same to the end that it will use its best efforts to obtain such approvals.

26.0 Developer warrants that the party signing this document on its behalf has the lawful authority to enter into this Agreement and to bind Developer.

IN WITNESS WHEREOF, Developer and Service Company have executed or have caused this Agreement, with the named Exhibits attached, to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this Agreement.

WITNESSES:

NORTH FORT MYERS UTILITY, INC.

*Moira Drown*  
Print Name: MOIRA DROWN

By: *A.A. Reeves III*  
A. A. Reeves, III  
Vice President

Print Name: \_\_\_\_\_

*Ronald Kerfoot*  
Print Name: RONALD KERFOOT

By: *James L. Ziegler*  
James L. Ziegler

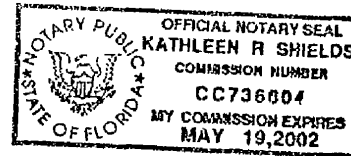
*Norman F. Huelshman*  
Print Name: NORMAN F. HUELSHMAN

STATE OF FLORIDA  
COUNTY OF LEON

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of November, 2001, by A. A. Reeves, III, as Vice President of North Fort Myers Utility, Inc., a Florida corporation, on behalf of the corporation. He is personally known to me or has produced Colorado Personally Known as identification.

*Kathleen R. Shields*

Print Name: KATHLEEN R. SHIELDS  
Notary Public  
State of Florida at Large  
My Commission Expires:

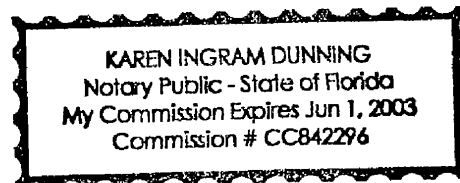


STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of November, 2001 by James Ziegler, who is personally known to me or has produced Colorado License 92-259-5514 as identification.

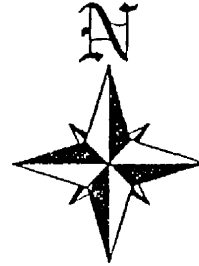
*Karen Ingram Dunning*

Print Name: Karen Ingram Dunning  
Notary Public  
My Commission Expires: 6/1/03



This Instrument Prepared By: Martin S. Friedman, Esquire, 2548  
Blairstone Pines Drive, Tallahassee, Florida 32301.  
agrmt\devag\ziegler 10/30/01

LEGAL DESCRIPTION



DESCRIPTION:

THAT PORTION OF A PARCEL OR TRACT OF LAND DESCRIBED IN OFFICIAL RECORD BOOK 448, PAGES 423 AND 424 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA LYING WESTERLY OF STATE ROAD No. 45 (200' R/W), ALSO KNOWN AS U.S. HIGHWAY 41 AND TAMIAMI TRAIL, LESS THE RIGHT OF WAY FOR BETMAR BOULEVARD (50' R/W), SAID PARCEL MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE EASTERLY RIGHT OF WAY LINE OF BETMAR BOULEVARD (50' RIGHT OF WAY) AND THE WESTERLY RIGHT OF WAY LINE STATE ROAD No. 45 (U.S. HIGHWAY 41 AND TAMIAMI TRAIL), (200' RIGHT OF WAY), THENCE S 39°28'01" E ALONG THE WESTERLY RIGHT OF WAY LINE OF STATE ROAD No. 45 FOR A DISTANCE OF 102.30 FEET TO THE POINT OF BEGINNING. THENCE S 50°31'59" W FOR A DISTANCE OF 80.65 FEET (A DISTANCE OF 80.84 FEET IS SHOWN ON THE STATE ROAD DEPARTMENT RIGHT OF WAY MAP); THENCE S 01°13'03" E ALONG THE EASTERLY RIGHT OF WAY LINE OF BETMAR BOULEVARD (50' RIGHT OF WAY) BEING 25 FEET EAST OF AND PARALLEL TO THE WEST LINE OF THE NORTHEAST QUARTER (NE 1/4) OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION 3, TOWNSHIP 44 SOUTH, RANGE 24 EAST FOR A DISTANCE OF 346.82 FEET; THENCE S 89°26'03" E (MEASURED), (S 89°26'46" E (DEED)) ALONG THE NORTH LINE OF THE PARCEL DESCRIBED IN THE OFFICIAL RECORD BOOK 1835, PAGES 741 AND 742 FOR A DISTANCE OF 385.74' (MEASURED), (385.76' (DEED)); THENCE N 39°28'01" W ALONG THE WESTERLY RIGHT OF WAY OF STATE ROAD No. 45 FOR A DISTANCE OF 520.48 FEET TO THE POINT OF BEGINNING.

CONTAINING 2.01 ACRES MORE OR LESS

SUBJECT TO EASEMENT, RESERVATION, RESTRICTIONS AND RIGHT OF WAY OF RECORD.

BEARINGS ARE BASED ON THE WESTERLY RIGHT OF WAY LINE OF STATE ROAD No. 45 BEARING N 39°28'01" W.

EXHIBIT "A"

CONTRIBUTIONS IN AID OF CONSTRUCTION

SYSTEM CAPACITY CHARGES

Upon execution of this Agreement, Developer shall pay Service Company the following System Capacity Charges to induce Service Company to reserve the following system capacities for Developer's proposed connections. Developer understands that system capacity is only reserved upon payment of charges by Developer to Service Company. Said system capacity charges to be paid by Developer are those which are set forth in Service Company's Service Availability Policy approved by the Florida Public Service Commission and, accordingly, these charges may be changed from time to time with the approval of the Commission.

Payment Schedule

<u>Customer Category</u>	<u>Number of gpd</u>	<u>Charge Per gallon</u>	<u>Total Charge</u>
Commercial	924	\$2.31	\$ 2,134.00

Should actual water consumption exceed 924 gallons per day or should the use of the property change, then Service Company may require Developer to pay additional system capacity charges.